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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

The New Year.

"RING OUT the Old, Ring in the New." This familiar verse of TENNYSON'S is particularly appropriate on New Year's Day, 1925. For changes of moment are about to take place in the legal world. An old system of Conveyancing is dying and a new one is in the throes of an oft-postponed birth. New judges have just been appointed, and a veteran figure in the judicial world, who for a time returned to help his erstwhile colleagues with the tasks of the Michaelmas Sittings, is once more retiring to the sober shades of the House of Lords and the Judicial Committee. The Chancellor and the Law Officers of less than a twelvemonth have just gone and newcomers have taken their place, or rather have re-taken their old places. Amidst all these changes it is our pleasant duty to offer to all our readers the Compliments of the Season.

The Late Judge Sir H. Howland Roberts, K.C.

AMONGST THE sad events of this otherwise gay season of festivities has been the news that His Honour Judge HOWLAND ROBERTS, K.C., who only a year or two ago retired from the County Court Bench, has departed this life at the comparatively early age of sixty-nine. The late judge was not only a first-rate lawyer whose decisions met with the most profound respect at the hands of the Divisional Court; he was also one of the most patient, painstaking and courteous of judges. His quiet dignity, ever-present good nature, unimpeachable impartiality and shrewd common sense made him the most esteemed of County Court judges amongst counsel, solicitors and the lay public as well. He was never known to quarrel with anyone or lose his temper with even the most irritating of witnesses. Impertinence felt itself snubbed by his very air and manner; no one was ever insolent towards him. Many practitioners hoped that Lord BIRKENHEAD would take the opportunity of promoting him to the High Court Bench, but probably his age and the near approach of his retirement rendered this course not very feasible. No County Court judge ever left behind him a more honoured name or was so deeply regretted when he retired by all who practised in his court.

Sir James FitzJames Stephen's Academic Career.

WE ARE indebted to the Council of Legal Education for drawing our attention to a fact which we believe is very little known, namely, that Mr. Justice FITZJAMES STEPHEN, although never a Reader of the Inns of Court, was at one time a Professor of Common Law at the Inns. He received the appointment in 1875 on his return from India, and held it until he became a judge in 1879. Of course, his appointment to the Bench, unlike that of Sir HUGH FRASER, was not really in essentials a recognition of academic distinction, for Sir JAMES was chiefly known as one who had held high legal appointments in India, and it was only in the evening of a long and distinguished career in the world of action that he accepted a Professorship in Lincoln's Inn. Mr. Justice FRASER, on the other hand, although a distinguished and successful advocate, had been nearly the whole of his professional career a Reader, and it was in that capacity that his greatest renown had been acquired. The following extract from his brother's "Life of Sir James FitzJames Stephen," pp. 377-8, is of interest in this connection: "In December, 1875, he (the late Mr. Justice Stephen) was appointed Professor of Common Law at the Inns of Court. He held his office of Professor until he became judge in 1879. . . . He had certainly one primary virtue in the position. He invariably began his lecture while the clock was striking four and ceased while it was striking five. He finally took leave of his pupils in an impressive address."

Innovations in Judicial Appointments.

AN ESTEEMED contributor sends us the following interesting suggestion: "*A propos* of the appointment of Sir HUGH FRASER to the High Court Bench, and the promotion of His Honour Judge ACTON to the same dignity three or four years ago, the question arises whether these precedents might not well be extended in other directions. Why should not some distinguished stipendiary magistrate be selected for the honour which has been conferred on a County Court judge? Such a selection would put new heart into our police magistrates and stimulate them to prove worthy of such a distinction. And why should not a literary lawyer be chosen for the same reward of intellectual merit conferred on academic members of the Bar? There are editors of Encyclopædias, of legal journals and of many sets of Law Reports who would prove estimable occupants of even the High Court Bench. Lord BLACKBURN, after all, was only a law reporter when Lord WESTBURY made him a puisne judge, and he became in due course a law lord. Probably precedents of this kind will become more common in the future."

The Prestige of the Privy Council.

THE JUDICIAL COMMITTEE has begun of late years to adopt two rather inconvenient practices. It seems to reserve judgment for an unconscionable time in nearly every case it hears, and then months afterwards deliver a whole sheaf of these reserved judgments one after the other. Again, it does not any longer read its judgments in open court; all that usually happens is that one member of the court makes a formal recital to the effect that the court have decided so and so for reasons which have been reduced to writing and delivered to the parties. It seems rather a pity that the public should be debarred an opportunity of hearing the judgments of the most august assembly on earth read out ceremoniously by the presiding member of the Board. But the comparative unimpressiveness of the Privy Council's ritual has often been commented on by eminent publicists who have visited its modest abode in a room off Downing-street. President ROOSEVELT was fond of telling how, on a visit to England, he strolled into the court and found half a dozen old gentlemen in morning coats solemnly considering whether or not an injunction to restrain a trespass would lie against an Indian god. It appears that the worshippers of the god in question had marched in procession into the territory sacred to a rival god. A free fight of their supporters followed, and when the police suppressed this, the injured god took proceedings for an injunction in the local court. The British judge, untroubled by technicalities as to the precise status or *locus standi* of a god in English jurisprudence, cheerfully granted the relief prayed. The High Court, however, held that a god was neither a corporation sole nor any other legal entity with a *persona* capable of suing and being sued, and reversed the decision of the first instance court. The Judicial Committee had to re-solve the tangle thus created. How they solved it Mr. ROOSEVELT did not remember, nor have we been able to trace the case in Indian appeals. But everyone is familiar with the old juridical legend that some sect in India worship a god whom they call "Privy Council."

General Average and the Stockholm Conference.

AMONGST THE interesting questions discussed at the Stockholm Conference of the International Law Association was the question of GENERAL AVERAGE and the suitability of the York-Antwerp Rules to *post bellum* conditions of carriage by sea. The principal questions which in the matter of general average the International Law Association considered on this occasion, but without arriving at any unanimous conclusion were the following, viz.: (1) Is it advisable that the York-Antwerp Rules should be amended? If yea, in what respect? (2) Is it advisable that the said Rules should be codified internationally? According to Signor EMILIO ROBERA, the eminent average adjuster of Genoa, the former question must be answered in the affirmative by all professional experts acquainted with the Rules. The widespread application the York-Antwerp Rules have now attained in maritime commerce has given rise to many discrepancies of views and methods in the interpretation and application of several of the Rules amongst the principal average adjusters in Italy and abroad. This inconvenience has been the cause of many controversies, repudiations of adjustments, and lawsuits, with the expense and prejudice of the interested parties consequent thereto; all of which might be avoided in the future if suitable amendments were made to the Rules on the basis of unanimous decisions of competent men on the most debated points. He therefore thinks that it would be desirable to amend the Rules in accordance with the prevalent current opinion, thus adopting, in respect of the same, that which the ancient jurists called "*Communis Opinio.*"

The York-Antwerp Rules.

THE YORK-ANTWERP Rules on General Average, it may be useful to remind the reader, were framed and adopted in 1890 at a Maritime Law International Conference held at Liverpool in the autumn of that year under the presidency of Dr. SIEVEKING, the Chairman of the Hanseatic High Court of Appeal at Hamburg. The work of framing those rules had been commenced in May, 1860, at a conference held in Glasgow and carried on during the next thirty years at successive conferences held in London (1862), York (1864), where a book of "York" Rules were agreed to, Hague (1875), Bremen (1876), and Antwerp (1877), where a second and modified set of Rules were adopted. These, however, were rapidly displaced after 1890 by the York-Antwerp Rules then framed. These have remained substantially unaltered until the present conference, but differences of interpretation by the courts of the various maritime nations have gradually tended to destroy the uniformity which nominally had resulted from the general adoption of the Rules.

The Eighteen Rules.

THE YORK-ANTWERP Rules are eighteen in number. Their character may be gathered from their titles, which are as follows: Rule I, Jettison of Deck Cargo; II, Damage by Jettison and Sacrifice for the Common Safety; III, Extinguishing Fire on Shipboard; IV, Cutting away Wreck; V, Voluntary Stranding; VI, Carrying Press of Sail—Damage to or Loss of Sails; VII, Damage to Engines in Refloating a Ship; VIII, Expenses of Lightening a ship when ashore and consequent damage; IX, Cargo, Ships' Materials, and Stores burnt for fuel; X, Expenses at Port of Refuge; XI, Wages and Maintenance of Crew in Port

of Refuge; XII, Damage to Cargo in discharging; XIII, Deductions from cost of repairs; XIV, Temporary Repairs; XV, Loss of Freight; XVI, Amount to be made good for cargo lost or damaged by sacrifice; XVII, Contributory Values; XVIII, Adjustment. Where a ship has to be saved from loss or risk of loss in the general interest of all parties concerned in the voyage, namely, shipowners, charterers, cargo-owners, it is obviously desirable that the master should not be hampered in the exercise of his judgment as to the best steps to be taken for the saving of the ship by considerations as to the proportion of loss that will fall on owners or charterers as the result of the steps he takes. It is desirable that, whatever steps he takes, and on whomsoever the loss falls in the first instance, all the parties concerned will suffer exactly the same proportion of loss in the long run. This is done by a system of "averaging" losses, *i.e.*, assessing contributions to be borne by the uninjured parties for the compensation of the injured party. For example, if cargo on deck is jettisoned to save the ship, the deck-owners should be indemnified against their loss by a contribution from all other parties, shipowner, freight-receiver, owners of the rest of the cargo, which will make their loss precisely proportionate to that of each of those others. The assessment of this "General Average" in special cases, as set out in the titles of the Rules, is the object of the York-Antwerp Rules.

Rules Specially Requiring Amendment.

Amongst the rules which require amendment, in an opinion of Senor Robera published by the Association, there must be included rr. III, IV, V, VI, VII, XI, XIV, XVII and XVIII. Rule III refers to the sacrifices incurred in extinguishing a fire which breaks out on board ship, and the part of the rule to which exception is taken by many jurists is that which provides that damages caused, in extinguishing a fire, to such portions of the ship and bulk cargo or to such separate packages of cargo as have been on fire, shall not be made good as general average. This exclusion, which has prevailed in English court decisions under the influence of a doctrine which is attributed to Benecke, arose out of a theory that there is no voluntary sacrifice when the latter is inevitably required by the force of events. Certain French authors would also justify this same exclusion by the fact that in respect of the things that are already touched by the fire there has been not only no sacrifice, but even an advantage, inasmuch as they have been saved from certain destruction by the operations directed to extinguish the fire. But following these theories to their logical conclusion, one is forced to admit that there could never be any sacrifice in cases in which a serious danger threatens the adventure—a postulate which contradicts the very basis of the doctrine of general average. The event of a fire breaking out on board undoubtedly constitutes a case of particular average in respect of the portions of the ship and cargo that have been on fire, but all damages caused to the ship and her cargo by operations directed to extinguish the fire must be considered as general average, because these operations are directed to overcome the action of the fire and so to procure the common safety of ship and cargo. The damage caused by the action of extinguishing the fire assumes the character of particular average, whether done to portions that have been on fire or to portions that have escaped the fire. It is, then, unjust to hold as without any value a portion of a ship or of the cargo merely because it has been touched by the fire. Indeed, it very often happens that the general average damage exceeds the particular average damage. For these reasons, the International Congress of Maritime Law, held in the City of Genoa in 1892, passed a resolution suggesting the suppression of this part of r. III.

Stranding as the Result of *Force Majeure*.

Another rule which it is generally considered ought to be amended is Rule V, which relates to the effects of stranding. If the stranding is rendered necessary by a case of *force majeure* it constitutes a particular average at the charge of the ship, but if the stranding is optional, and is resorted to with the object of rendering less disastrous the consequences of a state of danger, it evidently constitutes general average. Substantially Rule V, in the wording of the 1890 text, institutes two kinds of intentional strandings, treated differently. In the first, there is no freedom of choice, *i.e.*, it is a case of absolute certainty that the ship and cargo would be inevitably lost were it not resolved to run her ashore. In the second, the running ashore is resorted to in order to avoid greater damage. This distinction, however, is rather academic, inasmuch as in practice it will always be extremely difficult, if not impossible, to ascertain with certainty that the ship would be inevitably lost in the first kind of stranding. A sudden change in the weather, an unforeseen current, unexpected assistance might substantially alter the material facts. It is the impending danger to the ship and cargo which determines the deliberation of the Master, and this is the essential condition for the contribution. The text of this rule, therefore, should be worded in accordance with the resolution which was passed by the Congress of Genoa in 1892, as follows: "Damage caused by intentionally running a ship on shore shall not be made good in general average unless it be proved that the stranding was the direct and immediate effect of a resolution taken by the master for the common safety."

Deductions "New for Old."

Another rule requiring amendment, according to the opinion of the eminent Genoan average adjuster already quoted, is Rule XIV, which is in the following terms: "No deductions 'new for old' shall be made from the cost of temporary repairs of damage allowable as general average." This wording, as Senore Robera points out in his considered opinion referred to above, might lead one to suppose that not all temporary repairs are allowable in general average. Such repairs, however, always are in the nature of general average, so much so that they are made with the object of being able to carry the cargo to destination, and it so happens that, on carrying out the final repairs, the temporary repairs are completely destroyed. These temporary repairs, the sole object of which is to allow the ship and her cargo to proceed expeditiously and economically to her place of destination, without incurring any avoidable warehousing and reshipping expenses, are evidently made for the purpose of avoiding heavier damages; and as they thus assume the character of an *utilis gestio* performed in the interest of all concerned, they entitle the party who has effected them to obtain in each case the full reimbursement of his costs. On this point, in Italy, the interpreters of this rule are in agreement. Not so in England, however, where certain average adjusters hold that when the injuries are in the nature of a particular average, the temporary repairs executed assume the same character. It is therefore suggested by Senor Robera that this rule be amended as follows: "No deductions 'new for old' shall be made from the cost of temporary repairs, made in a port of refuge, of damage either allowable as general average or constituting particular average."

The Law Society's School.

We print elsewhere a note of the varied arrangements made by the Law Society's School in Bell Yard for the instruction of students in the Hilary Term. This school is now rapidly becoming one of the leading centres of academic law in the United Kingdom. The Oxford and Cambridge Law Schools, of course, enjoy a primacy they are not likely to lose, and the Scots Law School in Edinburgh, connected as it is with the Faculty of Advocates, is one of the most virile and creative of juristic academies. The University of London at one time was going ahead by leaps and bounds, but of late years the colleges of our metropolitan university seem to be tending towards more modern studies such as Economics, Commerce, Science, Geography and History. The Inns of Court have always stood somewhat apart and seem not to undertake any definite form of legal research. Under the twenty-years' principalship of Professor Edward Jenks, however, the Law Society's School advanced from

modest beginnings to a great position as a fount of legal scholarship and to-day its tutors number among them many of the most promising youthful members of the Bar. Under the successors to Principal JENKS the School seems to have in no way lost any of the enthusiasm for legal erudition which he imparted to it.

Solicitors and an Inn of Court.

WE MAKE no apology for returning to a favourite suggestion frequently offered in these columns, namely, that the Law Society should endeavour to acquire on behalf of solicitors some one of the famous old Inns of Chancery. Such of the nine lesser Inns as are still in evidence are given over to base uses, at least in the eyes of patriotic lawyers, who must regard even the Patent Office in Staple Inn as in some sense a desecration of a once sacred spot. It ought not to be impossible for solicitors to succeed in negotiating an option for the purchase of one of these ancient retreats. Indeed, if they do not, we suspect that one day they will awake to find that some American lawyer-millionaire has got in ahead of them—just as Johnson-lovers were disturbed five years ago by finding that a merchant of New York was buying up every Johnson relic that fell into the market. An Inn of Chancery, restored and converted into a law college for articled pupils, would be an added rose in the chaplet of the Law Society.

Lord Darling: An Appreciation.

Omne tulit punctum qui miscuit utile dulci. This very familiar tag from the Latin grammar of our schooldays may be appropriately quoted of the distinguished ex-judge who, after twenty-seven years' service in the King's Bench, emerged in Michaelmas Term from a retirement which had lasted barely a twelvemonth, and delighted an admiring common law bar by the spirit, wit and vigour with which he occupied as a temporary auxiliary the dignity he had so long adorned. No English judge of our time has played so prominent a part in the public eye, nor has any won a name so universally known in foreign countries. Yet none has commenced his judicial career amidst such unanimous protests and gloomy prognostications on the part of public instructors and superior persons. The qualities which have won so marked a success must be very remarkable ones, and are well worth a study.

The late Professor CHURTON COLLINS was fond of telling a story of a little experience of his own. One day he was conducting through the National Portrait Gallery a group of literary and academic ladies. They stopped in front of one portrait, the name of which could not be read. It was that of an old-time judge in all the glories of scarlet and ermine. There was a chorus of delighted admiration. The refinement of his features, the candour of his brow, the intellectuality of his forehead, the benignity of his eyes, the firmness of his lip; all these were pointed out by everyone. But who is he, all asked. The portrait was examined more closely. An almost illegible scrawl in small script in a corner told these incredulous enquirers that their hero was the famous JEFFREYS, the "Bloody Jeffreys," of whig tradition and popular legend. Instantly everyone began to change her point of view. The face was found to conceal sinister lines not previously remarked. Cruelty, ferocity, cupidity, veniality, servility were discovered to lurk hidden in the corners of his mouth. And in ten minutes everyone was firmly convinced that the portrait was that of an obvious and irredeemable ogre. Such are the tricks that preconceived prejudice plays with human appreciations!

We quote this story because it is not without significance where Lord DARLING is concerned. There have always been two opinions about the learned judge. The first is that of those lawyers, jurymen, witnesses, clients and spectators who have actually been present in court while the learned judge has been presiding over a trial. Such auditors nearly always come away most enthusiastic admirers. His dignity and grace of manner, the benign geniality of his wit, the lucidity and beautiful delivery of his summing-up, the readiness with which he meets every emergency, and the quiet austerity with which he snubs impertinence from whatever quarter it may come: such are a few of the attributes at once ascribed to him. Even hostile critics who consider him somewhat of a poseur and who are inclined to think that he stage manages a great criminal trial just a little too dexterously, nevertheless agree that there is an undoubted fascination about him. The fascination of the serpent for the bird, a clever lady who disliked his views once described.

The second opinion about Lord DARLING is that of worthy and well-meaning persons who do not condescend to visit any court where he is sitting, but who pronounce sentence upon his character on the strength of a reputation first conferred on him by the daily press. He is a jester, they say. He is a NERO who fiddles when Rome is burning. Therefore he must be a trifler, a dilletante, a callous imitator of that PONTIUS PILATE who on the most momentous occasion in the history of Christendom could find nothing better to do than voice the cynical sneer, what is truth! Needless to say, such criticism of Lord DARLING is so superficial and unfair as any criticism of any public personage well could be. The learned judge is neither shallow nor a trifler. But he distinguishes between the serious and the gay sides, which are always commingled inextricably together in all human affairs. He refuses to confine both in one pompous tomb. A consummate artist, he realises the truth which modern psychoanalysis has made plain, that the weight of tears and tragedy which lies beneath all serious affairs will press down with too heavy a weight upon the human heart unless it is allowed to relieve itself from time to time by a touch of gaiety and mockery. His jests are a balm, which heals the wounds which cross examination bites in sensitive spirits, and relieves for a moment the intolerable burden of anxiety which worries the soul of the litigant.

Lord DARLING must be named one of the great English judges unless we are to reject the maxim *Securus judicat Orbis Terrarum*. But no one has ever pretended that he is a great lawyer; his judgments in the Reports are never likely to be read by fervent disciples in future ages. Nor was he a great advocate at the Bar. He had a fair amount of success as a junior and more probably a larger practice than is generally supposed, but after he took silk he seems to have suffered an eclipse—possibly due to the accident that he had entered the House of Commons and was winning rather a flamboyant reputation in that somewhat Philistine assembly—when Lord HALSBURY discovered his real merits and to his lasting honour had the immense courage to brave the comments of the narrow-minded and the dull by elevating him to the Bench. For three months his judicial protègé had to face black looks and envious scowls from amongst the leaders of the Bar. But in less than a year he had shown that he was a man of mettle, who knew how to make himself respected. In three years he had become a popular favourite and had won quite a following amongst the Junior Bar. In less than a decade he was perhaps the most admired of puisne judges. And before twenty years had passed over his head he was a prime favourite among candidates for the Chief Justiceship when Earl READING forsook the groves of THEMIS in search of a Proconsul's laurel wreath. What, then, were the qualities which won him so great a fame?

In every judge, we believe, there are three very different characteristics which give him weight, and few indeed are the judges who possess all three in any high degree. The first is personality. The second is the capacity for handling cases, counsel, juries, witnesses and evidence in the actual hustle and bustle of a confusing trial. The third is a certain knack for assimilating just enough law to do the work of the day without discredit, and not so much law as to run the risk of becomg a mere pedant. Lord DARLING, in our opinion, possesses all three gifts in a high degree.

Personality is the most elusive of human graces. It is partly an affair of the body and partly an affair of the mind. A man who is completely unimpressive cannot possess personality

however great his courage and his genius. But a man with the most massive and commanding gifts of stature or even of dignity may nevertheless fail to exhibit it; he may become merely pompous or grim. Lord DARLING's personality is largely due to a unique charm of manner, a certain touch of the dramatic, a mixture of virile firmness with a delicacy and refinement and not infrequently a langour of appearance almost feminine. But it is also in no small degree a matter of physique and looks. Small and insignificant in stature, Lord DARLING has, nevertheless, a most striking and arresting countenance. It is shapely in a delicate way, refined, half-humorous and half-austere. The eyes are arresting; the mouth is at once mobile and firm. It is not an English face, nor yet a modern French face. He has essentially the features not seldom to be noticed in portraits of French courtiers and noblemen in the days of the *Ancient Regime*. His wit, his lucidity of style, his beautifully articulated pronunciation, his frequent cynicism, his occasional depths of unsuspected romanticism, his adjustment of manner to the needs of the occasion, his instinct for dramatic pose; all these are very typical of the aristocratic France which passed away in 1789. Indeed, Lord DARLING'S type of feature and manner, even at this day, is very common amongst the seigneuries of Quebec and the voyageurs of the great North-West. For the French-Canadian is the true spiritual inheritor of the France of RICHELIEU, of LOUIS QUATORZE and of MARIE ANTOINETTE. The late Sir WILFRED LAURIER, very unlike Lord DARLING in all other respects, bore a marked resemblance to him in feature, in gesture, and in pose.

Again, Lord DARLING has very remarkable gifts for the handling of men and matters in court. This is a much more difficult and a much rarer art than is commonly imagined. A successful judge must be able to "manage" counsel; he must succeed in restraining without causing offence; he must be able to effectually put down the incorrigible with a snub and to induce all to confine their case within reasonable bounds of relevance and of time. Counsel, left to their own devices, would extend every trial far beyond the sounding of the last trump by the Archangel GABRIEL. Again, witnesses must be kept in order without hustling or bullying them. Juries must be shepherded adroitly between the ditches on either side into the fold of sanity and sound sense. And the evidence must be summarized in the judge's final address so clearly that the jury can grasp it all, so artistically that the weightiest things impress them as weightiest, and so adroitly that a critical Court of Appeal cannot be persuaded to believe that there must be misdirection somewhere. This is not nearly so easy as it seems. Many excellent judges, men of common sense and a noble impartiality, have failed in the management either of counsel or of witnesses, or of juries, or of the unseen Court of Appeal which presently is to sit in judgment. Lord DARLING never did so fail, or at most, only once—and that was when Mr. PEMBERTON BILLING for once out-manœuvred him. We feel reasonably certain that he would not have succeeded in doing it a second time, had chance once more brought him into forensic contact with the learned judge.

It is usually supposed that Lord DARLING is not very much of a lawyer. Indeed, at one time he used to display in court an almost undisguised contempt for legal learning. But, as a matter of fact, the popular opinion here is somewhat of an exaggeration. Lord DARLING is a complete master of the Criminal Law, and he knows as much as any other judge about the law of procedure and the law of evidence. He is quite acute when dealing with complicated statutes, such as Public Health Acts and Rent Restriction Acts, which are so common a feature in present-day litigation. But he is not much interested in the general principles of law and his researches into legal history seem to have been devoted chiefly to the human and the literary aspects of that fascinating study. In fact, his turn of mind is literary rather than scientific; he is an artist, not a philosopher nor an analyst. Hence he has generally rather avoided legal issues involving the profounder aspects of the law of contracts, torts, or real property. But, even where he has had to try cases where these issues necessarily arose, his abounding good sense and almost perfect balance of judgment have kept him nearly always right. No judge has been less frequently reversed by superior courts.

It is, however, as a great judicial figure, presiding in the grand manner at some momentous trial, that Lord DARLING has most interested mankind. In these terrible dramas of real life he somehow seems to become one of the protagonists. Spectators lose their interest in the plaintiff or defendant for a moment, in order to watch and admire the judge. Such a *dénouement* has its perils. But it has also its advantages to the cause of justice. It tends to tone down the urgent sentiment of sympathy or antipathy which juries feel for or against the parties, and makes possible a calmer and more judicial attitude of mind. Thus a certain detachment of sympathies enters into their verdict. Perhaps here Lord DARLING has unwittingly rendered a signal service to the advancement of justice.

"Riot" in Insurance Policies.

DECISIONS of the House of Lords are so seldom unanimous that the lawyer who in the course of his perusal of "Appeal Cases" finds a unanimous decision of a strong House is apt to be impressed and look closely at the case. Curiously enough, too, it is usually just those rare cases in which the law-lords are all of one mind that come most into conflict with the view of the facts taken on first impression by the plain man. There is generally something just a trifle paradoxical about judgments of the final tribunal of appeal on which all its members were agreed.

This observation is suggested very strongly by the recent case of *London and Lancashire Fire Insurance Co., Ltd.* v. *Bolands, Ltd.*, 1924, A.C., 836, in which the House reversed the Irish Court of Appeal and the Irish King's Bench Division of the High Court of Justice, Southern Ireland, on a special case stated by arbitrators. The question was a simple enough one, namely, whether the "riot" clause in an insurance policy—which protects the insurance company from liability where the losses insured against have been the result, direct or indirect, of, *inter alia*, "riot" can possibly include an armed burglary committed by four men, in such circumstances that the burglars could, under the criminal law, be convicted of "riot," although there was no riot in the popular sense of the term. The Irish Courts had refused to read the exception clause as covering burglaries which are only technically riots, following a very familiar *dictum* to that effect of Lord Justice RONAN in *Boggan* v. *Motor Union Insurance Co.*, 1922, 2 I.R. 184, 189, which has been quoted as authoritative in the latest editions of some legal text-books. But the House of Lords reversed this finding. They took the view that if a burglary is so conducted as to be technically in criminal law an indictable "riot," there is no reason for excluding such a riot from the class of acts excepted by the policy. The court which took this view was a strong court: Viscount FINLAY, Lord ATKINSON, Lord SUMNER, Lord BLANESBURGH and Lord DARLING. The three first-named judges delivered reasoned judgments in favour of their view. Lord DARLING contented himself with concurring. Lord BLANESBURGH had appeared to lean the other way during the argument, and said so in his concurring judgment, but finally intimated, without giving any reasons of his own, that Lord SUMNER'S judgment had convinced him.

It is not to be denied that the average layman and lawyer will find a great deal of difficulty in coming to the same conclusion as that now authoritatively pronounced to be the law of England, as well as of Ireland, for there is no difference between the two systems of law on the point, although, in theory, an English court may not be bound by a decision on an Irish appeal. *Primâ facie*, one naturally assumes that a "riot" clause is intended to protect the insurance company against liability for abnormal crimes due to public disturbance, which in England, by a provision of the common law, confirmed by statute after the famous

GORDON RIOTS, are the subject of a liability claim for compensation by the injured party against the police rate of the hundred. Indeed, it is well known that the riot clause was first introduced into policies after those riots and for this very reason. This view seems confirmed by the wording of the clause, which in the present case was in an Irish common form: "This insurance does not cover loss directly or indirectly caused by or happening through or in consequence of (*a*) invasions, hostilities, acts of foreign enemy, riots, strikes, civil commotions, rebellions, insurrections, military or usurped power or martial law or the burning of property by order of any public authority." If the *ejusdem generis* principle of interpretation has any real value, surely in such a case the context indicates that a "riot" means something of a seditious or at any rate a public nature, *not* a mere armed burglary under circumstances of such terrorism as to overawe minds of ordinary firmness, as was here the case.

This view of the clause is supported very strongly by Lord Justice RONAN in *Boggan* v. *Motor Insurance Co., supra*, whose *dictum*, however, the House of Lords have now expressly disapproved in the present case. That *dictum* was in these terms: "In dealing with this case we must consider whether the robbery occurred *during* a riot, or whether we must take clause 2 and exception (*c*) together and read clause 2 as 'loss or damage by burglary, housebreaking, or theft, except where such burglary, housebreaking, or theft constitutes a riot in law.' This seems to me to be inconsistent with the policy as a whole. The meaning of the policy seems to be that if, *while a riot is in progress*, or if there has been a riot, and in consequence of it, a theft takes place, the company is free; but the mere fact that the crime of theft itself contains elements of riot, in law does not exclude the right of the insured under the policy. In that case every robbery for which on indictment the accused could technically be convicted also for *riot would be outside the policy*." This certainly strikes one as the common-sense interpretation of the situation, and also seems to agree with the definition of "riot" given by Lord PHILLIMORE in the leading case of *Field* v. *Receiver of Metropolitan Police*, 1907, 2 K.B. 853, 860. But the House of Lords has quite definitely overruled it, and it must be taken as law that an armed burglary which amounts to a riot in the technical view of the criminal law is a sufficient "riot" to satisfy the "riot" clause exception as set out above.

Although the facts of the case were purely a matter for the arbitrators, they are interesting in themselves and require some brief notice as illustrating the circumstances in which the Irish courts and the House of Lords took such diametrically opposed views. The robbery which was the cause of the loss insured against occurred at the cashier's office in a bakery at Dublin. On Saturday, 25th June, 1921, at about 10 p.m., four armed men entered the bakery, held up the employees with revolvers, and took away the cash in the safe, amounting to about £1,250. There were no other disturbances about the premises or in the street outside either on that day or on the previous day, although, of course, Ireland was then in a far from peaceful state. The arbitrators incidentally found that the loss was not due to "civil commotion," either directly or indirectly; and rested their finding in favour of the company solely on the fact that technically the burglary amounted to an indictable "riot."

The practical result of the case would seem to be that insurers of goods and chattels against theft, robbery, and burglary must take care that the "riot" clause, now almost invariably inserted as an exception, is in some way limited, as otherwise nearly every armed robbery by three or more men would be outside the protection of the policy. Such robberies, unfortunately, have been very frequent in England under *post-bellum* conditions, but hitherto no insurance company has attempted to avoid liability by pleading the riot clause where the facts disclose a mere ordinary robbery unattended by any tumultuous civil disturbance such as in popular language amounts to a riot. Under most, if not all, insurance policies at present in vogue the householder would seem to lose all right to an indemnity in every such case.

Damages in Lieu of *Quia Timet* Injunctions.

THE unexpected may not always happen, but even in the Law Courts it certainly often does happen. This rather trite observation is forced from one who peruses the Law Reports and notices how very often points of law which one would imagine must have arisen a thousand times, come up for decision at this late stage of legal history in cases of what is nearly, if not quite, first impression. What is still more surprising is the differences of judicial opinion which such cases very frequently make manifest.

All this is *à propos* of *Leeds Industrial Co-operative Society, Limited* v. *Slack*, 1924, A.C. 85. Here the House of Lords overruled Mr. Justice ROMER and the majority decison of the Court of Appeal, from which Lord Justice YOUNGER had dissented, and held that the Chancery Court has jurisdiction to grant damages in lieu of a *quia timet* injunction where it is of opinion that damages rather than an injunction is the equitable remedy in the case of a threatened wrong. In so doing, it incidentally disapproved *dicta* of the Court of Appeal in a case of thirty-five years ago, *Dreyfus* v. *Peruvian Guano Co.*, 1889, 43 Ch. D. These *dicta*, indeed, had been followed by the first instance judge, Mr. Justice ROMER, in preference to his own opinion, which would otherwise have favoured the view taken by the House of Lords. It remains to add that neither Lord SUMNER nor Lord CARSON agreed with the view of their brethren in the Lords, and the majority decision was that of Earl BIRKENHEAD, Viscount FINLAY and Lord DUNEDIN.

The facts of *Leeds Industrial Co-operative Society, Limited* v. *Slack*, *supra*, are simple, and need not long detain us. The defendants were engaged in constructing buildings, which when completed, it was found, would obstruct the plaintiff's ancient lights. The latter asked for an injunction, and the question at once arose whether the injury caused to the builder by restraint of his building would not be greater than that caused to the plaintiff by the obstruction of his ancient lights. Mr. Justice ROMER thought it would be greater, and that therefore damages would be a more equitable remedy than the grant of an injunction. But the question then arose whether he had power to grant such an injunction.

It is scarcely necessary to remind readers that the Chancery Procedure Amendment Act, 1858, generally styled Lord CAIRNS' Act, conferred on the Court of Chancery jurisdiction when it so deemed just to award damages in lieu of an injunction, when a breach of legal right has been committed. Lord CAIRNS' Act has been replaced by the Statute Law Revision Act and Court Procedure Act, 1883, but the combined effect of s. 16 of the Judicature Act, 1873, and s. 1 of the Statute Law Revision Act, 1898, is to maintain in force the jurisdiction conferred on the Chancery Court by s. 2 of Lord CAIRNS' Act. Did this jurisdiction, however, extend to cases of a merely threatened injury which may never actually be committed? Where there is no *injuria* there could at common law be no right to damages, and in equity no right to an injunction. A *threatened* injury can be restrained by injunction in equity, however, because equity *aids* the law, and will not permit a person to carry out a wrong he threatens to commit. But a risk of future *damnum* is not in law *damnum* at all, nor is a fear of future *injuria* a legal wrong. So the question arises whether the statutory jurisdiction conferred by Lord CAIRNS' Act extends to the indirect creation of a statutory tort where none exists at common law, because there is present neither *injuria* nor *damnum*, but merely a well-grounded apprehension of both.

Now s. 2 of Lord CAIRNS' Act confers on the Chancery Court jurisdiction to grant damages where it has power to grant an injunction "against the commission or continuance of any *wrongful* act." The objection we have italicized certainly seems at first sight to contemplate an act which is an actual and not merely a potential wrong. In *Dreyfus' Case, supra*, Lord BOWEN

felt this contention to be so strong that he took it as clear that no damages could lie for a merely apprehended wrong. "It is true," he said (1899, 43 Ch. D., at p. 333), "the section applies in all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction, but the only weapon with which the court is armed by virtue of the section is to award damages to a party injured; which must, I think, mean damages where damages have arisen; and in a case where no damages have arisen in the ordinary sense of the term as known to lawyers, I am of opinion the court has no power to give damages."

Lord SUMNER, in the case on which this article is based, agreed with this view of Lord BOWEN. But he admitted that in two respects the Chancery jurisdiction to grant statutory damages under Lord CAIRNS' Act differs from the common law right of an injured party to damages against a tort feasor. In the first place, the injuries suffered by the plaintiff have been taken to be those from which he is suffering at the date of the judgment, and not those at the date of the writ, as in the case of an ordinary suit in tort. In the second place, the sum awarded has been calculated so as to include the whole injurious effects both present and future, so as to be an indemnity for all *damnum* suffered in fact, *in praesentis* and—to use an Irishism—*in futuro* as well. These two differences have been observed as a matter of inveterate practice since the Court of Chancery began to exercise its statutory jurisdiction under Lord CAIRNS' Act, and this naturally suggests that the Court of Chancery understood from the commencement that its powers were quite different from those of a common law judge in a common law action for damages. While admitting all this, Lord SUMNER suggested that this assumption of jurisdiction—he rather hints without saying that it was an *ultra vires* assumption of jurisdiction by the Chancery judges—was merely a matter of procedure, not the creation of a new statutory right to damages where none existed at common law. Procedure, he evidently thinks, is a matter in which the Chancery Court might justly and properly adopt a different rule from the King's Bench in awarding damages for a common law wrong. But, he contends, it is another thing altogether for the Chancery Court to create a tort unknown to the law, or a breach of legal right so unknown. Therefore he dissented from the judgment of the House. But the majority of the Law Lords felt that the Chancery Court had rightly assumed the grant to it of a novel statutory power, and that its adoption of a different method of assessing damages from the common law method was a perfectly logical and correct induction from the creation of a new kind of wrong by the Legislature, namely, the *threat* of a legal wrong as yet too inchoate to be actionable *en banco*.

One need only point out in conclusion that one indirect effect of Lord CAIRNS' Act is that it gives to the Court of Chancery a sort of equitable jurisdiction to legalize the commission of torts or breaches of contract subject to the condition that the wrongdoer pays damages for the privilege of breaking the law. But this form of equitable jurisdiction is really only analogous to the familiar modern rule which compels the injured party to mitigate the injury in order that the wrongdoer may not be compelled to pay greater damages than is reasonably necessary.

Readings of the Statutes.

The Carriage of Goods by Sea Act, 1924; 14 & 15 Geo. 5, c. 22.

In some ways, from the standpoint of the legal practitioner, the most important of all the statutes enacted by Parliament in 1924 is the Carriage of Goods by Sea Act, 1924, which received the Royal Assent on 1st August, 1924. This measure, of course, was originally introduced in 1923 in order to give effect to the Convention arranged between all the Maritime Nations in 1922, for the purpose of providing a uniform form of bill of lading to be adopted by all the Nations represented at the Maritime Law Conference of that year. The Bill was introduced in 1923, and referred to a committee to consider ways and means of meeting opposition to its proposals in certain quarters. With a slight modification it was carried through the House of Lords later in the year, but necessarily dropped at the dissolution of Parliament in the late autumn. This year it was re-introduced and duly passed into law.

The lack of uniformity in national usages which rendered the bill necessary arose out of three habits of those shipping lawyers who drafted the common forms bills of lading in general use. In the first place, they nearly always attempted to draft the bill in a form which considered only the legal rules prevailing in the legal form to which the shipowner was subject; the consignor and the charterer had in practice to accept the bill thus tendered however inconvenient its provisions might be under the law of their nationality. No doubt the Law Merchant is everywhere largely the same, but sufficient diversities, statutory or otherwise, have existed in different European countries to render the shipping documents of one country scarcely very acceptable in another.

Again, the different categories of shipowners engaged in different kinds of commerce have tended to form rings, which have drafted model bills of lading commonly called "The —— Institute —— Clauses." These are incorporated not in direct terms but by reference in shipping documents issued by their own members. This practice has in an aggravated degree all the evils and inconveniences familiar to students of the abominable practice known as "legislation by reference." For parties of other nationalities are not familiar with the Institute Clauses of particular maritime communities, and, therefore, have the greatest difficulty in ascertaining what are the obligations they are undertaking.

One need only add that this recently has been improved upon by the great lines of seagoing commerce, which tend to issue their own model bills of lading, filled with every conceivable clause likely to protect their own interests. The consignor, especially the foreign consignor, could not get these clauses altered even when they were highly disadvantageous to himself or even outrageously inequitable. Thus arose a situation which was a real hindrance to international commerce and was rapidly becoming impossible.

The Maritime Convention met this situation by providing a statutory form of bill of lading, which was to be adopted in every maritime country, no modification being committed. This involved the framing of clauses which so far as possible should hold the balance even between shipowner, charterer and consignor, and should do equal justice to each and all. It also involved the forbidding of "contracting out," and therefore necessarily restricts the "freedom of contract." But, as was pointed out at the Conference and later by the British Committee which reported on the bill, such "freedom of contract" was quite unreal and imaginary; no real freedom to contract existed; the great monopolists dictated the terms of the bargain. "Freedom of contract" being impossible, the next best thing was to attain "Equality of contract," and this the Convention contrived on the whole to attain.

The scheme of the Convention consisted in drafting nine Articles laying down the Rules governing all bills of lading. The first Article defines terms. The second Article provides that *all* carriers of goods are to be subject to it, with the exception of certain special cases for which special conditions are provided in Art. VI. Article III sets out the "responsibilities and liabilities" of the parties. Article IV sets out the "rights and immunities." Article V provides for the surrender in certain cases of those "rights and immunities." Article VII provides that parties may contract out of the statutory rules *so far as risks arising prior to loading* are in question. Article VIII leaves carriers of each nationality subject to the statutory limitations of liability found in his own national law. Article IX makes gold bullion the monetary par of value wherever monetary units are referred to in any rule.

The plan adopted by the Act for giving effect to those Articles is ingenious and original. It does *not* enact them in so many

substantive clauses of the Act. It places the whole group of Articles in a Schedule and gives to that Schedule statutory effect by s. 1 of the Act itself. The remaining sections go on to make certain declaratory provisions as to the meaning of certain provisions of the Articles, or else modify it in certain particulars. In fact, there are in all only six short sections—with, however, a very long Schedule!

Section 2 is essentially declaratory. It provides that in the interpretation of the Articles no absolute undertaking by the carrier of the goods to provide a seaworthy ship is to be implied by our courts—an important point on which the Articles themselves were feared by our shipowners, not unreasonably, to be dangerously ambiguous. Section 3 provides that every bill of lading issued in Great Britain or Northern Ireland (relating to carriage of goods by sea) is to contain an express statement that is to have effect subject to the provisions of the statute and the Articles. But s. 4 modifies the provision in the case of bills relating only to coasting trade in Britain or Northern Ireland. And s. 5 provides for certain modifications in the case of bulk cargoes where there exist customs of trade relating to the insertion of bulk cargo weights in the bill of lading.

RUBRIC.

Res Judicatæ.

Probate Administration of Japanese Subject's Estate.

(*Re Aikyo*, 150 L.T. 32: Duke, P.)

A very interesting point of practice, arising out of Art. 5 of the Treaty of Navigation and Commerce, 1911, between Britain and Japan, came before the President of the Probate, Divorce and Admiralty Division, in the case of *Re Aikyo, supra*. The facts, shortly stated, were these. A Japanese subject had resided in England and had died here, but not under such circumstances as would create an inference that he had acquired an English domicile. His rights of status and the inheritance of his personal property (as distinct from realty, which, of course, is governed by the *Lex Loci Rei Sitae*), therefore, depend on the *Lex Domicilii*, in this case Japan. In that country the principle of *Renvoi* does not seem to apply, and, therefore, need not be considered. It so happened that the deceased, who was a bachelor, and died intestate, left no relation in this country who by the Laws of Japan is entitled to take charge of and administer his estate. These facts were verified by affidavit in the usual way on the hearing in Court of an application for the grant of letters of administration to the Japanese Consul.

In these circumstances, the person *primâ facie* entitled to a grant would appear to be the person in Japan or elsewhere entitled by Japanese Law to such a grant. But no such person is present in this country: Japan is very distant and remote in time computed in terms of travel therefrom: in the meantime the assets of the deceased would be *in custodia neminis* and might easily be hopelessly lost. By Art. 6 of the Treaty of Commerce and Navigation between Britain and Japan, 1911, the Japanese Consul in this country is authorized to take steps necessary for the urgent protection of the property (*inter alia*) of Japanese subjects when such property is in England, whether or not the persons entitled thereto, are in England or outside it. *Primâ facie* the next-of-kin of a Japanese who dies in England must be presumed to be likewise Japanese, unless and until it is shown that they have acquired or possess some other nationality. That being so, their personal property in England, when *in custodia neminis*, becomes property urgently requiring consular protection. Therefor, apart from any other legal grounds, the Japanese Consul is entitled on this ground alone to apply for and receive letters of administration to the personal estate in England of a deceased Japanese subject.

Arbitration Practice.

(*Acrimaglio* v. *Thornett and Ferr*, 68 SOL. J. 630, C.A.; *Bourgeois* v. *Weddell & Co.*, 1924, 1 K.B. 539, Div. Court; *Bjornstad* v. *Ouse Shipbuilding Co.*, 68 SOL. J. 754, C.A.)

In the three cases named above there occurred practice points in connection with arbitration which deserve noting, since the conclusion arrived at by the Court in each case is by no means self-evident, and is not covered by any previous authority. Two of the decisions are those of the Court of Appeal, and are merely that of a Divisional Court; but in the absence of appeal their practical value is obvious.

In *Acrimaglio* v. *Thornett and Ferr, supra*, the point was quite a neat one. An English firm contracted to sell carbonate of soda and soda ash to an Italian buyer. The contract contained an arbitration clause which provided: "any dispute arising out of this contract to be settled by arbitration in London in the usual way." This was held, naturally enough, to mean that the arbitration was to be conducted in accordance with the machinery provided by the English Arbitration Act, 1889; that is fairly obvious. But the court further held that the final adjectival phrase, "in the usual way," meant that the general usage for settling such disputes, in the English trade dealing with the commodity in question, was also to govern the procedure.

In the second case, *Bourgeois* v. *Weddell & Co., supra*, a very curious point arose. Here buyers and sellers of a quantity of meat had a dispute as to its quality. The matter went to arbitration. The buyers had sent a third party to inspect and report upon the meat *before* the dispute was submitted to arbitration. After the submission, they appointed the same person as their arbitrator. The arbitrators failed to agree and appointed an umpire. The buyers wished to call their arbitrator as a witness before the umpire, since he was the person who had inspected and reported on the meat for them at the critical dates. The sellers took the objection that an arbitrator is a member of the tribunal, and does not cease to be such on the reference to an umpire, so that he is not entitled to act in two inconsistent characters, that of judge and of witness. The Divisional Court, however, while not deciding that such is the rule in the case of all arbitrations, took the view that in a commercial arbitration, reasons of convenience render it undesirable to exclude any useful witness for mere technicalities. Now, the arbitrator's status as a member of the tribunal becomes merely nominal and technical after the reference to an umpire, and therefore he ought not to be debarred from giving evidence before the umpire. Obviously, if the rule applies also in non-commercial arbitrations—a matter not directly decided—a very large question of procedure and public policy emerges.

In the third case, *Bjornstad* v. *Ouse Shipbuilding Co., supra*, the point is quite a short one. Here the parties to a contract containing an arbitration clause, were a British firm and a foreigner resident outside the jurisdiction. A dispute was submitted to arbitration, but the parties could not concur in the appointment of an umpire or single arbitrator and, therefore, the foreigner applied to the court to appoint an arbitrator in accordance with the provisions of s. 5 of the Arbitration Act, 1889, and the precedent of *Eyre* v. *Leicester Corporation*, 1892, 1 Q.B. 136. The Court of Appeal, however, distinguished that case on the ground that there the parties were British subjects, whereas different principles apply when one or both is a foreigner resident out of the jurisdiction. In the latter case the court must look to all the possibilities of future action on the award, if any, and therefore have a discretion either (1) not to appoint an arbitrator, or (2) to appoint one unconditionally, or (3) to attach any reasonable conditions as an incident of the exercise of its discretion.

Dual Accounts of Bank Customer.

(*Greenhalgh* (*W. P.*) *& Son* v. *Union Bank of Manchester*, 1924, 2 K.B. 153.)

An interesting example of the conditions which govern a banker's relations to his customers is afforded by the case quoted above. Here the customer of a bank, for certain adequate reasons, disclosed and assented to by the bank manager, opened two accounts in the same name, which were kept distinct by appropriate symbols. The customer paid into the bank bills which were received and discounted or collected on his behalf. He appropriated each bill as he paid it in to one or other of the accounts specifying which. The banker, in the events which happened, was desirous of transferring certain bills from one account to the other. It was held that he had no right to do anything of the kind. He had received the bills as agent for the customer whose directions he must, as agent, obey, and therefore he could not overrule the express instructions of his client as to the destination of the credits thus paid in.

The Venue of an Offence.

(*Rex* v. *Yasukichi Miyagawa*, 1924, 1 K.B. 614; 68 SOL. J. 500.)

The medieval maxim, *boni judicis est ampliari jurisdictionem suae curiæ*, expresses a tendency which would seem to be fundamental to the judicial character; for in all ages judges show a tendency to assume rather than limit their jurisdiction. The growing tendency of our criminal courts to assume jurisdiction

if there is even a remote connection between English territory and the commission of a crime is a modern illustration of the perennial potency of this spirit. Perhaps the tendency was never more fully displayed than in the recent decree of the Court of Criminal Appeal in *Rex* v. *Yasukichi Miyagawa, supra.*

This appeal raised a point in the application of s. 6 of the Dangerous Drugs Act, 1920, which renders unlawful the importation into, or exportation from, the United Kingdom of certain dangerous drugs, one of which is morphine, except where the dealer procures a licence. Section 7 of the same Act gives authority to a Government Department to make regulations controlling the "manufacture, sale, possession and distribution" of these drugs. By a regulation made thereunder it is enacted that "no person shall supply or procure or offer to supply or procure any of the drugs to or for any person whether in the United Kingdom or elsewhere" except a duly licensed person.

A Japanese who was not licensed, but had an office in London, arranged with a firm in Switzerland to consign from Switzerland to Japan a quantity of morphine. The morphine never was in, nor was it to come through, England, but the Swiss consignors sent to the Japanese bills of lading relating to the account to his London address. This, the court held, amounted to "procuring" the drug contrary to the prohibition of the statute, and was an offence against the regulation.

Dying Declarations.

(*Rex* v. *Booker*, 88 J. P. 75, C.C.A.)

One of the best-known exceptions to the rule that hearsay evidence is inadmissible permits the adduction in a charge of homicide of a statement, by a dying person *in articulo mortis*, provided the deponent has a settled expectation of death. It is not always easy to say at what moment the state *in articulo mortis* commences, nor is it always obvious whether or not a dying person is in a hopeless and settled state of expecting death. Most dying persons are quite unconscious of the nearness of the end and remain optimistic of recovery despite the obviously reasonable probabilities of their case until the very end. The admission of such evidence, therefore, is an anxious and responsible one for the trial judge, and in view of the difficulty of arriving at a correct determination upon such a matter, the Court of Criminal Appeal will not interfere with his decision unless he has manifestly misdirected himself as to the circumstances he ought to weigh.

In *Rex* v. *Booker, supra*, the accused was tried, convicted and sentenced for the murder of a boy. The case turned largely on the identification of the accused with an assailant described by the boy. The case for the prosecution alleged that in the middle of the afternoon some railwaymen heard screams and saw the boy running towards them covered with blood. He shouted out: "Come quickly; I am dying." When the men arrived the boy said that a man stabbed him with a knife; he described the man's appearance. The boy was then removed to a home and a nurse was called in. The boy said to her: "Put me on a bed; I am dying," and he then went on to describe the assault, and his assailant's appearance. He died next morning.

Now, *primâ facie* one would probably be inclined to think that requests for assistance, coupled with the cry "I am dying," indicate a hope of escaping death by the aid of the assistance invoked; they hardly seem to indicate a settled and hopeless expectation of "death." But it is probably not feasible for anyone except the trial jury to weigh the meaning of the words in the circumstance, and, therefore, the court upheld the admission of the evidence.

AMICUS CURIAE.

A Conveyancer's Diary.

Lord Birkenhead's Act is postponed for another year; but the consolidating statutes are to be introduced during the coming session of Parliament, and it seems almost certain that by New Year's Day of 1926 the new Law of Property will be in force. That being so, conveyancers are facing the inevitable, and are inquiring how they can learn most quickly and easily the essentials in our altered law of real property. This week we propose to give some practical hints as to reading, which it is hoped will assist the average practitioner. Curiously enough, it is only the experienced practitioner who feels this difficulty. The law student of to-day, whether articled pupil, or university undergraduate, or bar-student reading in chambers, hardly knows that any difficulty exists. He is being taught *de novo* the new rules of real property law, and, although he finds that they make a call on his capacity for concentrated study, yet he does not find them any more unintelligible than the older generation found the Statute of Uses, the Rule against Perpetuities, and the Rule in *Shelley's Case*. Indeed, Lord Birkenhead, when he introduced his bill in the Senate, told the assembled peers of the heart-breaking efforts which he, in his student days at Gray's Inn, had made to master the intricacies of uses and limitations, and how he had vowed that if ever he attained the Woolsack, he would repeal the Statute of Uses. Not many such boyish vows have ever been so completely carried out in real life.

The Conveyancer's Task in 1925.

Indeed, the reason why experienced practitioners find it so difficult to grasp the new law, whereas students find it so easy, is a very simple one. The conveyancer has his mind already filled with the old lore and it is not easy to displace this with a totally new system of details. His difficulty is like that of Cambridge Dons, who find it almost impossible to understand Einstein's now famous theory of Relativity. It is not that there are any real mysteries behind Einstein: on the contrary, it is no more difficult to learn the mathematical theory of Invariant Algebra, Meta-geometry, Quaternions and the Minskowski six-dimension Calculus than it was for an earlier generation of wranglers to master the Integral Calculus or the complexities of Quintic Equations. Einstein's laws of motion are no more subtle or abstract or unreal than those of Newton. Therefore the student of the higher mathematics finds it quite easy to grasp the new dynamics and is astonished at the obtuseness of his elders, who complain of its obscurity or deride its supposed unreality. But the trained mathematician has to overcome a whole encyclopædia of fixed prepossessions before he can comprehend Einstein. And, therefore, he naturally complains of the heavy burden of unfixing his moorings before he can find anchorage again.

The Conveyancer's Difficulty.

Now all this suggests what is the "royal road" to the comprehension of the Birkenhead Act for the experienced practitioner. His best plan is to copy the methods of the student, and to begin re-learning the law of property from the very beginning, but learning it—like the present-day law-student—in books which incorporate the new rules of law in their proper place as just an ordinary part of the law. Most text-books of real property teach the subject historically. They begin by explaining the feudal origin of our law, then its mediæval developments, then the Statute of Uses and its far-reaching effect on conveyancing, and then the great Nineteenth Century Reforms. Up-to-date books go on to add the changes made by the Birkenhead Act, and so leave the reader with a knowledge of the law as it will be when that Act comes into force. This is the natural method of acquiring a knowledge of Real Property Law. It is also much the simplest and easiest method.

The Secret of the Birkenhead Act.

Now there can be no better plan of attacking the mysteries of the Birkenhead Act than the one just suggested. Get some student's text-book of Real Property Law, brought up to date in the way mentioned above, and just read it through from the beginning. In this way the practitioner will refresh his memory in the old law as well as gradually master the new. For this purpose there exists an almost ideal book. This is the latest edition of Mr. TOPHAM, K.C.'s "Real Property." This edition is called the "New Law of Property." It teaches the whole of our land laws from the beginning, and finally brings in—just in its proper historical sequence—the changes made by the Birkenhead Act. These are tabulated in each chapter under the heading of "New Law." Mr. TOPHAM is not only an experienced practitioner but, as a reader to the Inns of Court, a trained teacher of law to students, and he has every gift of exposition that could be desired. His style is lucid, methodical, interesting and extremely exact. We know of no better guide to the subject.

Mr. Topham's Book on Real Property.

Having finished and mastered "Topham," the conveyancer should go on to read Sir ARTHUR UNDERHILL'S lectures on the Birkenhead Act. Sir ARTHUR is not only an experienced conveyancer and a reader to the Inns of Court, but had a large share in the drafting and shaping of the Birkenhead Act. No man can understand better what it set out to do, the way it has selected for doing it and why that way—rather than other ways—has been selected. His book gives, not details, but principles. He explains exactly how the Act has set out to abolish the distinction between legal and equitable estates, to assimilate real property to personal property, and to get rid of obsolete and anomalous incidents of conveyancing, such as the *gavelkind* form of customary descent. He discusses the effect on trusts, sales, mortgages, settlements and leases. He points out fully and clearly the all-important purpose served by the keystone of the Act, the so-called "curtain clauses," which place equities and beneficial interests "behind a curtain," so that they continue to exist for all purposes

Sir Arthur Underhill's Lectures.

which concern the welfare of the beneficiary and the security of his income, but cease to exist as a burden on the land in the hands of a purchaser. In fact, a perusal of his lectures leaves the reader with a clear idea of the scheme and method of the statute. "Topham" gives a mastery of the new rules as part of the whole law: "Underhill" confers an understanding of their *raison d'être*. A combined study of both works should leave the reader well seised in the new law. But it will be advisable for the reader, when he has finished "Topham" and "Underhill," to turn to the Act itself, and to the Consolidating Acts when passed, in order to get a systematic acquaintance *seriatim* with their contents. For this he will want a succinct guide. He will need some book which just explains the changes one by one without comment, without discussion of reasons, without reference to their place in the old law. Such a guide he will find in a little book written by a solicitor "Wilkinson's Guide to the Birkenhead Act." A perusal of this little work should complete his knowledge of the subject, at any rate in outline.

Familiarity with the New Law.

But even after a practitioner has come to know the new law very well, he will still for a time remain lacking in the familiarity with it necessary for confident work. A student who has finished his law course is in the same position. How does that student acquire the needed familiarity? In two alternative ways. He may acquire it by the practical handling of real cases, and then he is rather apt to acquire it at the expense of his client. Or he may acquire it by steadily and systematically reading through the Law Reports each month as they appear until he has seen from constant contact with the facts of reported cases exactly the way in which legal rules are applied. Now there are no reported cases on the New Law of Property; there cannot be many for some years to come. Therefore reports are not available for purposes of self-discipline. But a substitute exists, the discussion of the new law contained in articles in the legal press. We can recommend two such sources of information. The first is an excellent series of articles which appeared during 1922 and 1923 in that monthly publication *The Conveyancer*. The second comprises the four series of articles on the new law, in 1921, in 1922, in 1923 and in 1924 respectively, which have appeared in THE SOLICITORS' JOURNAL. And to the perusal of those we must leave the reader for the present.

MORTMAIN.

Landlord and Tenant Note Book.

Rent Restriction and County Court Jurisdiction.

Solicitors are often in doubt as to whether or not action for the recovery of dwelling-houses should be commenced in the High Court or the county court when the rental actually agreed exceeds the statutory limit of protected dwelling-houses, but where he knows that the defendant intends to plead that the standard rent is really within the Rent Restriction Acts. The difficulty, of course, is this. If the case is deemed by the court to relate to a claim "arising out of" the Rent Restriction Acts, then s. 17 (2) of the Act of 1920 gives the county court a special jurisdiction to entertain it, and the landlord, even if he succeeds, will not get High Court costs. On the other hand, if the claim does not "arise out" of the Acts, the county court has no jurisdiction in such an action; if commenced there, it will be dismissed with costs for want of jurisdiction. Unfortunately there are many confusing cases on the meaning of the provision in s. 17 (2), which confers the extended jurisdiction on the county courts: see *Bensusan* v. *Bustard*, 1920, 3 K.B. 654; *Purves* v. *Graham*, 1924, S.C. 477; *Chapman* v. *Hughes*, 1923, 129 L.T. 223, and *Gill* v. *Luck*, 1923, W.N. 284.

If the recent judgment of Mr. Justice MCCARDIE in *Rusorff* v. *Lipovitch*, 1924, W.N. 323, delivered on the 28th of November, should either not be appealed, or should survive the ordeal of scrutiny in the Court of Appeal, these doubts will be greatly diminished. In that case, a house was let at £2 6s. a week, a rental which (1) is outside the limits of the Rent Restriction Acts, and (2) is also much outside the £100 limit of the County Court Acts, which applies to actions for possession other than those arising out of the Rent Restriction Act; in the latter case, of course, the county court jurisdiction is extended to hear any claim "arising out of" the Act. The landlord issued a specially indorsed writ in the High Court, claiming possession and mesne profits; he then applied for final judgment under Ord. XIV. The tenant put in an affidavit alleging that the rental exceeded the standard rent, claiming that he had paid rent in excess, and counter-claiming for the alleged overpaid amounts. The Master deemed that the case was one of a claim "arising out of" the Rent Restriction Acts, and remitted the case to a county court. This order Mr. Justice MCCARDIE reversed on appeal to the judge in chambers; he took the view that where the rent *primâ facie* exceeds the statutory limits of protected dwelling-houses, an action to recover the premises is not brought under the Rent Restriction Acts merely because the tenant alleges that the standard rent, if ascertained, would show the premises to be within them. Therefor the county court has no special jurisdiction in such a claim, and the High Court is the proper forum.

It is scarcely necessary to point out that under the County Courts Act, 1888, as amended by the County Courts Act of 1903, s. 3, the county court has jurisdiction in three different categories of actions for recovery of premises where the rent and value of lands do not exceed £100 per annum. Section 59 gives jurisdiction in actions of ejectment, *i.e.*, actions by an owner against a person who is not a tenant. Section 138 gives jurisdiction in actions for recovery of possession by a landlord against his sometime tenant where the tenancy has expired by effluxion of time or notice to quit, but the tenant refuses to give up possession. And s. 139 gives similar jurisdiction in recovery when there has been forfeiture consequent upon the rent being one half-year in arrear. In order to sue for recovery in the county court a landlord must show that his right to recover is based on one of those three grounds; otherwise he can commence proceedings only in the High Court. Provided one of those grounds is satisfied, however, the county court has extended jurisdiction up to the limits of value under the Rent Restriction Acts wherever a house is protected by those Acts. But it has no jurisdiction in a Rent Restriction case unless, first of all, the landlord's claim comes within one of those three sections. Such was the purport of Mr. Justice MCCARDIE'S decision. The importance of the judgment scarcely needs pointing out.

The Status of Options in Leases.

Practitioners are often puzzled as to the exact legal character of an option in a lease, *e.g.*, an option to purchase at the end of so many years conferred by the lessor on the tenant. The question arises, and sometimes is quite important, whether such an option is a term of the lease or a mere collateral bargain between the particular lessor and particular lessee. The recent case of *Batchelor* v. *Murphy*, 1924, W.N. 330, in which the Court of Appeal (WARRINGTON and SARGANT, L.JJ., the Master of the Rolls, dissenting) reversed a judgment of Mr. Justice TOMLIN in an interesting illustration of those options. Here, by a lease, dated 17th October, 1913, premises were demised to a lessee for ten and a half years from 6th October, 1913. The lease gave the lessee (defined as including lessee, executors, administrators and assigns) the option to purchase the freehold for £30,000. In May, 1915, the lessee died, leaving by will two executors. In November of the same year the lessee and the executors entered into a memorandum of agreement providing for the surrender of the old lease, and the grant of a new one on the "same terms and conditions" (with one named exception) as those in the old lease. No new lease was in fact ever granted, but on 4th October, 1923, the lessee gave a notice purporting to exercise his option under either (1) the old lease (not yet expired unless cancelled by the memorandum), or (2) the new lease, if the old had been cancelled. Mr. Justice TOMLIN held that, even if the memorandum amounted in equity to a new lease, such a lease did not include the original option to purchase—for that was a mere collateral bargain between the parties, and therefore not one of the "terms and conditions," to be embodied in the new lease. The Court of Appeal, however, took the view that the option is an essential term of the lease and must, therefore, be included by implication in the new lease to which the tenant was in equity entitled.

The Meaning of Lease in Conveyancing Documents.

We will conclude this column by just calling attention to the fact, sometimes overlooked by practitioners, that "lease" has in law three distinct meanings: *Sherwood* v. *Tucker*, 1924, W.N. 230. It may mean (1) the mere *contract* of tenancy, *i.e.*, the relationship between landlord and tenant, or (2) the tenant's property in the tenement leased, or (3) the document creating the lease. It is always important to make clear in which of those three senses an agreement uses the word. If it means (1) or (2), *i.e.*, the contract of tenancy or the tenant's rights of property in the premises, then usually a reference to the "obligations of the lease" will mean only those which run with the land, excluding more personal covenants by lessor or lessee which are not assigned by operation of law. But if it means (3), *i.e.*, the actual document, then *primâ facie* it will include the latter as well.

CHATTEL REAL.

Curia Parliamenti.

Law of Property Act: its Future in Parliament.

The Lord Chancellor and the Law Officers, it was generally rumoured in the lobbies of St. Stephen's just before the House adjourned, are much impressed by the representations made in various quarters that the date of the coming into force of the Birkenhead Act should be postponed to a somewhat later date than New Year's Day of 1926, which is at present the effect of the Postponement Bill. Among lawyers in the House of Commons there are two schools of opinion on the matter, both strongly represented. The common law practitioners generally take the view that indefinite postponements of the Act are undesirable, that the Consolidation Bills should be pushed through at the utmost convenient speed, and that the new law should come into force finally and irrevocably on the agreed date. They contend that the country and business men are tired of a policy of drift in the matter, and are inclined to be suspicious of postponements intended to meet the convenience of lawyers. On the other hand, chancery practitioners in the House, and solicitor members of Parliament seem, on the whole, disposed to take the view that after the enactment of the Consolidation Bills and the re-enactment of an emasculated Birkenhead Act, a pretty long *moratorium* should be instituted, during which lawyers can study and master the Bills. Some suggest a twelvemonth, some a triennium, and some even a quinquennium. That solicitors in the country share these diversities of opinion is indicated by the correspondence which has appeared in THE SOLICITORS' JOURNAL. On the whole, it seems likely that Lord Cave will accede, at least partially, to the second of these two views, and that a *moratorium* of greater or less duration will be granted once the Bills are really on the statute book.

Married Women's Torts and Crimes.

Lawyers in the House are also considering the question of taking some definite step to secure amendment in the existing state of the law which renders a husband liable for his wife's torts, and excuses a wife who commits an offence in the real or presumed presence of her husband. It is now becoming clear that *Edwards* v. *Porter*, discussed *ad nauseam* in the legal press, has not had the effect which some practitioners rather optimistically hoped it had; it has not abolished the anomalous liability of a husband for his wife's torts established in the familiar leading cases of *Seroka* v. *Kattenburg*, *Erle* v. *Kingscote*, and *Cuenod* v. *Leslie*. Opinion is quite of one mind, both amongst laymen and lawyers, that this anomaly ought to be got rid of and that its amendment by the Legislature is overdue. There seems no reason why the Government which has promised legislation to amend the guardianship of infants and separation orders in the interests of married women, should not at the same time use this opportunity to get rid also of some of the more serious liabilities of married men which cannot be defended on grounds of equity or natural justice. The husband's liability for his wife's torts and for her income tax, the undefined extent of his liability for her debts, and the absence of any practicable means of enforcing the performance of marital duty by wives, are all matters requiring consideration. If the Government prefers not to initiate legislation on these matters, there seems no reason why lawyers in the House of Commons should not themselves draft and introduce a private member's bill.

Prisoners' Aid at London Sessions.

A good many barristers in the House of Commons feel that the Home Secretary has not fully appreciated the situation in the reply he made on 16th December (*ante*, p. 196), to Mr. Thurtle's question relating to an unfortunate state of affairs said to exist at London Sessions. Prisoners who make application for and are allotted counsel to defend them under the Poor Prisoners' Defence Act, it is said, frequently find when the trial arrives, that no counsel on the panel has accepted the brief, and that they have either to proceed without counsel, or submit to an adjournment to next Sessions, when the same thing may possibly happen again. This is a serious grievance. It means that prisoners may be unjustifiably detained in custody awaiting trial long after their case ought to have been heard and disposed of. If the panel system leads to this unfortunate result, surely it ought to be amended. Indeed, the whole question of aid to poor prisoners requires consideration, both by the legal profession and by Parliament. In this connection reference may be made to the Scots system. For five centuries there has been in existence, north of the Tweed, a well-thought out scheme for granting the assistance both of law-agent and of counsel to the deserving but impecunious suitor. The Scots experience deserves careful consideration by English reformers.

MAGNA CARTA.

CASES OF LAST SITTINGS.

Court of Appeal.

BRIGHTON COLLEGE *v.* MARRIOTT (INSPECTOR OF TAXES).

No. 1. 14th and 24th November.

REVENUE—INCOME TAX—COMPANY—CHARITABLE TRUST—COLLEGE—SURPLUS AFTER PAYMENT OF EXPENSES—PROFITS CHARGEABLE WITH INCOME TAX—TRADE OR BUSINESS—INCOME TAX ACT, 1918, 8 & 9 Geo. V, c. 40, Sched. D, Cases I and VI.

A company limited by guarantee was incorporated to carry on an existing public school on lines defined by the memorandum, no dividend, bonus or profit being allowed to be paid to any member of the company, except in return for services rendered. Fees were charged for the education supplied. There was in most years a surplus of income over expenditure and such surpluses were applied in reducing mortgage debts, or in the provision of improvements and additions.

Held, that the school carried on a trade or business, and that such surpluses were profits or gains of such trade or business, and therefore liable to be assessed for income tax.

Decision of Rowlatt, J., *reversed*.

Appeal from a decision of Rowlatt, J. (reported 40 T.L.R. 763) on a case stated by the Special Commissioners of Income Tax. Brighton College, which had been carried on since 1846, was incorporated as a company limited by guarantee in 1873. The objects for which the college was established were stated in the memorandum of association as follows: (*a*) to continue with an improved constitution the existing Brighton College; (*b*) to provide thereby a sound religious, classical, mathematical and general education in conformity with the doctrines of the Church of England; (*c*) the doing of such other lawful things as are incidental or conducive to the attainment of the above objects. By the memorandum of association it was further provided that the income and property of the college should be applied solely towards the promotion of the objects of the college as set forth therein, and no portion thereof should be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise by way of profit to the persons who were at any time members of the college. The school had been carried on by the appellants in accordance with the memorandum and articles of association. Exemption from income tax under Sched. A had been obtained in respect of its public buildings and offices, and repayments of income tax had been made in respect of its invested funds on the ground that the college was a charity. The college charged fees for the education supplied, and the surplus of its income from fees and other sources over expenses was applied from time to time in improvements, additions, acquiring property for the college and paying off mortgages. The college was assessed to income tax in respect of a sum of £2,389, being such surplus for the year ending 5th April, 1923, and appealed. Rowlatt, J., held, reversing the decision of the Commissioners, that the college was a charity and not a trading concern, and if the fees were larger than the expenses it was in order to meet expenses and liabilities of a capital nature. The Crown appealed. *Cur. adv. vult.*

The Court allowed the appeal.

Sir E. POLLOCK, M.R., having stated the facts, said that the Income Tax Acts provided special exemptions for charities, and "charity" in its legal sense comprised trusts for the advancement of education. The Crown were content not to contest the claim of the college to be a charity, although not admitting that all similar institutions were to be treated as charities. The college had been allowed certain exemptions in respect of its buildings, &c., under r. 6 of Sched. A, but those exemptions only served to emphasize the fact that there was under the Income Tax Acts no general exemption for charities. Also it was clear that under income-tax law the fact that profits when made were to be devoted solely to the advancement of charity would not alone induce exemption. Such profits were taxable, and their destination did not secure immunity. The cases of the *Mersey Docks and Harbour Board* v. *Lucas*, 8 App. Cas., 891; *Coman* v. *The Rotunda Hospital, Dublin*, 1921, 1 A.C. 1; and *Trustees of Psalms and Hymns* v. *Whitwell*, 3 Tax Cas. 7, all supported that view. In the *Rotunda Case* profits were devoted to the hospital, and to widows and orphans, but, as profits, they were under the tax. The motive that brought them into existence did not matter. Further, a charity might carry on activities apart from its charitable works, and if profits were made they were taxable. As in the *Rotunda Hospital Case* and the *Trustees of Psalms and Hymns Case* (where hymn-books were sold at a profit), so in *Grove* v. *Y.M.C.A.*, 4 Tax Cas., 613, where a restaurant was provided, which catered not only for members of the Y.M.C.A. but for the public, and its profits were held not immune from taxation. Rowlatt, J., had pointed out in his judgment that there was

no possibility of segregating a part of the activities of Brighton College, such as fees received from students and the expenses of their education, and treating them as a subsidiary activity—a severable trading concern; but he decided that the whole concern was immune, as not being a trading society at all. He treated the surplus realised as arising fortuitously, and not derived of set purpose or design. But could Brighton College be treated as a non-trading society? In the case of *Rex* v. *Income Tax Commissioners, Ex parte University College of North Wales*, 25 T.L.R. 368, the income was derived from investments under a trust, and devoted to educational and general purposes. No question arose as to fees. In the *Commissioners of Income Tax* v. *Pemsel*, 22 Q.B.D. 296; 1891, A.C. 531, the exemption was in respect of the income from trust estates, no other income being in question. But in the present case fees were charged which produced surpluses from the years 1910 to 1920, and in 1921 reached the figure of nearly £6,500. Those surpluses had been used in paying off mortgages and in improvements, but they arose from contracts made between the college and parents, and had been varied from time to time. Cotton, L.J., said in *Erichsen* v. *Last*, 8 Q.B.D., 414, at p. 420: "When a person habitually does and contracts to do a thing capable of producing profit and for the purpose of producing profit he carries on a trade or business," a passage quoted with approval by Lord Esher (Master of the Rolls) in *Werle and Co.* v. *Colquhoun*, 20 Q.B.D., at p. 759. In *Re Incorporated Council of Law Reporting for England and Wales*, 1888, 22 Q.B.D., 279, the council were held to be carrying on a trade in selling their publications, though all the property and income were applicable solely to the promotion of the objects of the association, and Lord Coleridge said (22 Q.B.D., at p. 293): "It is not essential to the carrying on of a trade that the persons engaged in it should make or desire to make a profit by it . . . the definition of the mere word 'trade' does not necessarily mean something by which a profit is made." By the words of charge under Case 1 of Sched. D, the tax was charged "in respect of the annual profits or gains . . . from any trade," and by s. 237 "trade" included every trade or concern in the nature of trade. In the present case contracts were made with parents for fees, at a sum not less, but rather more, than the cost price of the services rendered, which in his (the Master of the Rolls's) view justified the finding of the Commissioners that a trade was being carried on. It was not the question of a case where the education offered was paid for only in part by fees. The appeal must therefore be allowed, with costs, and the assessment confirmed.

WARRINGTON, L.J., and SCRUTTON, L.J., delivered judgment to the same effect, the latter referring to *Esplen, Son & Swainston Limited* v. *Inland Revenue Commissioners*, 1919, 2 K.B. 731, and *The Eccentric Club Case*, 1924, 1 K.B. 390.—COUNSEL: *Sir Patrick Hastings*, K.C., and *Reginald P. Hills*; *Latter*, K.C. and *Edwardes-Jones*. SOLICITORS: *The Solicitor of Inland Revenue*; *Lingards, Browne & Myatt.*

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

High Court—King's Bench Division.

JOY *v.* EPPNER.

LANDLORD AND TENANT—RENT RESTRICTION ACTS—HOUSE LET AT PEPPERCORN RENT—DIVIDED INTO TWO FLATS IN 1921—UPPER PORTION LET AS DWELLING IN 1923—STANDARD RENT—APPORTIONMENT—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, 10 & 11 Geo. 5, c. 17, s. 12 (1) (*a*), (3), (7).

A house was let in 1905 at a peppercorn rent, increasing ultimately to £8 10s. a year, which was less than two-thirds of its rateable value. In January, 1923, the owner of the house, who resided in it himself, divided it into two flats, the upper flat being let at a rent of £2 a week. The tenant of the upper flat sought an apportionment for the purpose of obtaining a reduction of rent. The county court judge held that there had been no reconstruction, and arrived at a hypothetical rent, which he apportioned as the standard rent. The landlord appealed.

Held, that, until the letting of the upper portion in 1923, there had been no previous letting, which the county court judge was entitled to consider; that £2 a week was the standard rent of the property, and that, that being the first rent, there was no necessity to apportion; and that the appeal must be allowed.

Appeal from the Wandsworth County Court. The facts and material statutory provisions sufficiently appear in the following judgment.

SHEARMAN, J., delivering judgment, said that the appeal was from a judgment of a learned county court judge on a summons issued before him for an apportionment under the Rent Restrictions Act. The appellant, the landlord, had let the upper portion of his house to a tenant (the respondent) at £2 a week. Having gone into possession, the tenant took out a summons for apportionment, with the object of getting the rent which he had agreed to pay reduced under the provisions of the Act. The county court judge went into an enquiry as to how the house had been let originally. He entered into a species of enquiry as to what would have been the rent in the year 1914 which a hypothetical tenant would have paid for it. He made a hypothetical rent for the landlord, divided it into halves, and fixed the standard rent of the new premises as the half of the rent which he had fixed for the hypothetical rent. An appeal was brought to that court alleging that there was no jurisdiction under the Act for the county court judge to make any such apportionment at all, and, in his lordship's judgment, that was correct. The history of the property was this: From the year 1905 the house had been let at a peppercorn rent, increasing ultimately to £8 10s. a year. The lessee of the house lived in it, and in 1921 the landlord bought the house and lived in it. In January, 1923, he divided the house into two self-contained flats, letting the upper flat at a rent of £2 a week. The tenant sought to have his rent reduced by obtaining an apportionment. The argument on behalf of the tenant was that he was entitled to look into the value of this house, and, as it was not disputed practically that the premises let were just about one-half, it was said that he was entitled to pay just half the rent which a tenant would have paid in 1914. It was contended on behalf of the landlord that the case was not touched by the Act and that there could be no apportionment. In his lordship's judgment the contention of the landlord was correct. The whole question depended upon certain provisions in the Act of 1920. By s. 12 (1) (*a*) it was provided: "The expression 'standard rent' means the rent at which the dwelling-house was let on the third day of August, nineteen hundred and fourteen; or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let: Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent; and, where at the date by reference to which the standard rent is calculated the rent was less than the rateable value, the rateable value at that date shall be the standard rent." Sub-section (7) provided as follows: "Where the rent payable in respect of any tenancy of any dwelling-house was less than two-thirds of the rateable value thereof this Act shall not apply"—*i.e.*, dealing with these ground rents or peppercorn rents—"to that rent or tenancy." Those words were very strong, and where there was a rent or a letting such as was described in the present case the sub-section said that "this Act shall apply . . . as if no such tenancy existed or ever had existed." It was noticeable that the word "tenancy" was used there. When one came to s-s. (3), which was the section under which the application for apportionment of rent was made, it ran as follows: "Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies"—and it was alleged that the dwelling-house was then not the whole house but the upper half, then the section went on—"it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is comprised, the county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive." It was suggested that that gave the county court judge an absolute right to look into all the circumstances and to fix a fair rent. His lordship was unable so to read the section. It seemed to him that it was clear that when the standard rent had to be determined on that application that was the standard rent of the upper portion of the premises. For the section to apply at all it must be necessary to apportion the rent in relation to which the standard rent was to be fixed, *i.e.*, to apportion the rent on what had, he thought, properly been described as the "comprising property." There was only jurisdiction to deal with that when you found a rent of a complete comprising property. When s-s. (7) was looked at in the circumstances of the present case, there never was a rent at all or a letting of the comprising property so as to come under any of the provisions of the Act. The result was that it was not necessary to apportion—the county court judge could not do it; there was no previous letting at all of the comprising property which he was entitled to consider. It seemed to follow, as regards the upper portion of the premises, that the first letting which the applicant before the county court judge had was a letting at £2 a week, which, in his lordship's judgment, was the standard rent of the property. That being the first rent there was no necessity to apportion at all. The appeal must therefore be allowed.

SALTER, J., delivered judgment to the same effect, and the appeal was allowed.—COUNSEL: *Merriman*, K.C., and *J. H. Watts*; *Gilbert Stone*. SOLICITORS: *H. T. Nicholson*; *Tatton, Gaskell & Co.*

[Reported by J. L. DENISON, Barrister-at-Law.]

An Epitome of Recent Decisions on the Workmen's Compensation Act, 1906.

(Cases decided since last Epitome, Vol. 65, p. 395.)

II.

DECISIONS ON THE BASIS OF COMPENSATION.

(*Continued from p.* 211.)

Summers v. *Genese & Young* (C.A.: Lord Sterndale, M.R., and Warrington and Atkin, L.JJ., 19th February, 1923).

FACTS.—A girl suffered an injury to one of her fingers while she was employed as a seam-presser. She had, with previous employers, done tailoring work which involved sewing as well as seam-pressing. The county court judge declined to make a declaration of liability on the ground that there was no probability that the girl would be incapacitated in future by the injury.

DECISION.—That the county court judge appeared to have treated her merely as a seam-presser; and that as she appeared to have suffered some loss of earning capacity there must be a declaration of liability. (Case reported 129 L.T.R. 11; 16 B.W.C.C. 52; 1923, W.C. & Ins. Rep. 182.)

Burgess v. *Angolia (Owners)* (C.A.: Lord Sterndale, M.R., and Warrington and Atkin, L.JJ., 19th February, 1923).

FACTS.—By the terms of a written contract entered into between a trimmer and the owners of a fishing vessel, the trimmer was to be paid as wages and remuneration the sum and (or) the share in the profits against his name. He met with an accident arising out of and in the course of his employment. In arbitration proceedings the county court judge made an award in his favour. The employers appealed, and the question arose whether he was a workman to whom the Workmen's Compensation Act applied, having regard to s. 7 (2) of that statute.

DECISION.—The case resembled that of *Costello* v. *Owners of s.s. Pigeon*, 57 SOL. J., 609; 1913, A.C. 407; 108 L.T.R. 929; 6 B.W.C.C. 480; 29 T.L.R. 595; that the trimmer was remunerated within the meaning of s. 7 (2) of the statute, and that the appeal must be allowed, an award being made in favour of the respondents. (Case reported 129 L.T.R. 12; 16 B.W.C.C. 50; 1923, W.C. & Ins. Rep. 180.)

Ware v. *Whitlock* (C.A.: Lord Sterndale, M.R., and Warrington and Scrutton, L.JJ., 4th May, 1923).

FACTS.—As the result of an accident to a boy, fifteen years of age, who was employed on a farm, negotiations took place between his father and the employers. The employers agreed to pay £50 in full settlement of all claims to compensation. The money was paid into court, and the agreement was recorded in accordance with the rules, but on an application by the father for payment out of £14 8s. for costs, the county court judge refused to make the order, and at a later date ordered the agreement to be removed from the register on the ground that the compensation was inadequate and that the father had no power to agree to accept such inadequate compensation on his son's behalf. The employers appealed.

DECISION.—That the county court judge had no power to remove the agreement from the record under Sched. II (9) (*c*) or under any general jurisdiction of the county court, on the ground that in his opinion the compensation agreed on was inadequate. Appeal allowed. (Case reported 1923, 2 K.B. 418; 92 L.J., K.B. 763; 129 L.T.R. 595; 16 B.W.C.C. 100; 1923, W.C. & Ins. Rep. 201.)

Bromley v. *Staveley Coal & Iron Co. Ltd.*; *Drew* v. *Staveley Coal & Iron Co. Ltd.* (C.A.: Lord Sterndale, M.R., and Warrington and Scrutton, L.JJ., 7th May, 1923).

FACTS.—Two workmen commenced arbitration proceedings out of which the substantial question which arose was whether they were entitled to compensation for partial incapacity during a period when there was a strike. The county court judge, considering how far the loss of earnings arose from the state of the labour market, and how far it arose from partial incapacity resulting from the accidents, made awards in favour of the workmen. The employers appealed.

DECISION.—That during the period of the strike there was no incapacity to earn the same or more wages than there was before the injury which arose from the accident and that on the admitted facts, the county court judge was wrong in making the award in respect of the period of the strike, and that the appeal must be allowed as to that period, but dismissed in respect of a period after the strike. (Case reported 129 L.T.R. 620; 16 B.W.C.C. 77; 1923, W.C. & Ins. Rep. 246.)

Donn v. *British Oil & Cake Mills, Ltd.* (C.A.: Lord Sterndale, M.R., and Warrington and Younger, L.JJ., 22nd June, 1923).

FACTS.—A workman, who had formerly been a shoemaker, lost the top of his left thumb as the result of an accident whilst he was employed as a rollerman. In arbitration proceedings the county court judge dismissed the workman's application, stating (*inter alia*) that "the evidence tendered to show that he cannot do the work of a shoemaker—the trade in which he was employed at a time prior to the accident—does not affect the issue."

DECISION.—That the decision of the county court judge was contrary to the decision of the Court of Appeal in *Summers* v. *Genese & Young*, 129 L.T.R. 11; 16 B.W.C.C. 52; 1923, W.C. and Ins. Rep. 182, and that the appeal must be allowed. (Case reported 129 L.T.R. 680; 16 B.W.C.C. 171; 1923, W.C. & Ins. Rep. 293.)

Briggs v. *Gandy Belt Manufacturing Co., Ltd.* (C.A.: Sir Henry Duke, P., and Warrington and Atkin, L.JJ., 25th June, 1923).

FACTS.—An award of a weekly payment of one penny was made in favour of a girl who had lost an eye. At the time of the accident she was an infant under twenty-one years of age and therefore entitled to the benefit contained in Sched. I (16) of the Act of 1906. In making the award, on the second application, the county court judge declined to increase the nominal payment, but determined it altogether, on the ground that not only was she not incapacitated from work, but that risk of incapacity in the future had ceased.

DECISION.—That there appeared to be no evidence justifying the county court judge in coming to the conclusion that the risk of incapacity had ceased; that he did not seem to have considered the girl's earning capacity at all, or the difference between her present earning capacity and what might have been her earning capacity if the accident had not happened; that the incapacity which he had to take into consideration was a defect in earning capacity; and that the case must be remitted. (Case reported 129 L.T.R. 760; 16 B.W.C.C. 151; 1923, W.C. & Ins. Rep. 298.)

Pope & Pearson, Ltd. v. *Gamble* (C.A.: Sir Henry Duke, P., and Warrington and Younger, L.JJ., 25th June, 1923).

FACTS.—An application was made, on behalf of employers, for the review of an award made several years previously, by diminishing the amount of compensation. The only change of circumstances suggested by the employers was that the man no longer suffered from nystagmus, which had been the basis of the former award. The employers did not suggest any other change of circumstances, *i.e.*, any change in his ability to obtain work of any kind, the only change suggested being a change in his physical condition. The county court judge found that they had not proved that such a change had taken place. The employers appealed.

DECISION.—That, having regard to the grounds of appeal upon which the application for a review had been based, there was ample evidence to justify the county court judge in finding that such a change of circumstances had not taken place. Appeal dismissed. (Case reported 129 L.T.R. 684; 15 B.W.C.C. 157; 1923, W.C. & Ins. Rep. 303.)

Russell v. *Rudd* (H.L.: Lord Cave, C., Lords Buckmaster, Dunedin, Shaw and Carson, 20th March, 1923).

FACTS.—A workman, in October, 1920, met with an accident in the course of his employment. The respondent (the employer) did not dispute liability to pay compensation under the Workmen's Compensation Act, 1906, and paid him 35s. a week until 13th August, 1921, without entering into any agreement to do so. In June, 1921, an agent of the insurance company in which the respondent was insured informed the workman that he could no longer receive full compensation, and an agreement in writing was entered into by which the workman agreed to accept £75 in full settlement and discharge of all claims in respect of the accident. The respondent applied to the registrar of the county court to have a memorandum of the agreement recorded. The registrar refused and referred the matter to the county court judge. Eventually the matter came before the Court of Appeal, and that court ordered that the memorandum should be recorded and that an award for the respondent should be entered. From that decision the present appeal was brought.

DECISION.—That, apart from the provisions of the Act of 1906, relating to the redemption of a weekly payment by a lump sum, it was not competent for an injured workman to enter into an agreement with his employer for the acceptance of a lump sum in settlement of all claims under the Act; and that the appeal should be allowed.

Various decisions, including *Ryan* v. *Hartley*, 1912, 2 K.B. 150, and *Haydock* v. *Goodier*, 65 SOL. J. 416; 1921, 2 K.B. 384, were thereby overruled. (Case reported 67 SOL. J. 421; 1923, A.C. 309; 92 L.J., K.B. 429; 129 L.T. 193; 16 B.W.C.C. 358; 1923, W.C. & Ins. Rep. 119; 39 T.L.R. 324.)

Portland Colliery Co., Ltd. v. *Murray*; *Watson (John)* v. *Quinn*; *Dixon (William)* v. *Madden* (H.L.: Lords Birkenhead, Finlay, Dunedin, Atkinson, and Shaw, 14th June 1923).

FACTS.—The applicants had been permanently injured and had been awarded compensation on the basis of partial incapacity. Payment of compensation was afterwards suspended owing to the wages actually earned exceeding the pre-accident wage. Subsequently the wages ceased, in one case, owing to a strike and fell, in the other two cases, below the pre-accident wage.

DECISION.—That the right to receive compensation for partial incapacity then revived, and, as the amounts due in respect thereof necessarily involved enquiries as to what the men were competent to earn, it was competent for compensation to be assessed anew suitable to existing circumstances. (Case reported 1923, A.C. 566; 92 L.J., P.C. 177; 129 L.T.R. 746; 16 B.W.C.C. 116; 1923, W.C. & Ins. Rep. 197; 39 T.L.R. 579.)

Hall v. *Francois Cementation Company, Ltd.* (C.A.: Pollock, M.R., Scrutton, L.J., and Astbury, J., 26th November, 1923).

FACTS.—A workman made an application for the recording of a memorandum of an agreement by the employers to pay to him a weekly sum as compensation during total or partial incapacity. The genuineness of the agreement was disputed, but compensation was admitted by and paid down to a date subsequent to the date of the application to record. The county court judge ordered the registration of the agreement, without hearing any evidence.

DECISION.—That the employers (who had, according to the rules, disputed that the agreement was subsisting or enforceable) were entitled to call evidence before the judge, and that the case must be remitted for him to take into his consideration para. 9 of Sched. II of the Act of 1906. (Case reported 130 L.T.R. 443; 16 B.W.C.C. 202; 1924, W.C. & Ins. Rep. 59.)

Wood v. *Wood* (C.A.: Pollock, M.R., Scrutton, L.J., and Astbury, J., 27th November, 1923).

FACTS.—Two brothers and a sister carried on a farming business in co-partnership and were the tenants of two farms. The workman, who was a brother of the partners, was killed as the result of an accident arising out of and in the course of his employment with them. He lived at one of the farmhouses with his brother and sister. In arbitration proceedings the county court judge considered the meaning of the word "workman," as defined in s. 13 of the Act of 1906, and the expression "member of the employer's family dwelling in his house," and held that on a strict interpretation the workman did not dwell with his employer in his house, and made an award in his favour. The employers appealed.

DECISION.—That the county court judge had come to a right conclusion, and that the appeal must be dismissed. (Case reported 93 L.J., K.B. 208; 130 L.T.R. 305; 16 B.W.C.C. 208.)

Maloney v. *E. & T. Pink, Ltd.* (C.A.: Pollock, M.R., Scrutton, L.J., and Astbury, J., 28th November, 1923).

FACTS.—In reply to a claim for compensation, a letter was sent on behalf of the employers, in which liability was denied, but which also contained the following further statement: "We are, however, prepared to admit liability under the Workmen's Compensation Acts, and have already instructed our assured to pay compensation thereunder at the rate of 33s. 11d. per week. Unless, therefore, you are prepared to advise your client to accept such weekly payments, we must leave you to take what steps you deem advisable in her interests." No reply was received to this letter, and ultimately arbitration proceedings were commenced, in which compensation was claimed under s. 1 (4) of the Act of 1906.

DECISION.—That the letter could not be set up in the proceedings as constituting a complete admission of liability on the part of the employers. (Case reported 130 L.T.R. 500; 16 B.W.C.C. 217; 1924, W.C. & Ins. Rep. 72.)

Costello v. *Brown* (C.A.: Pollock, M.R., and Warrington and Sargant, L.JJ., 15th July, 1924).

FACTS.—In April, 1914, a workman received an injury resulting in total incapacity and an award of compensation was made at the rate of £1 per week. The Workmen's Compensation (War Additions) Acts of 1917 and 1919 raised this amount to £1 15s. per week. On 23rd December, 1923, the employer filed an application in the county court to redeem the payment under para. 17 of the first schedule to the Act of 1906, which provides that the employer may redeem the payment in manner therein set out. On the 1st January, 1924, the Act of 1923 came into force, and it enacted by s. 1 that the War Addition Acts were repealed, but that any addition should continue in force in the case of awards for total incapacity, and that in such cases "the addition shall, for all purposes, be treated as if it were part of the weekly payment." On 18th February, 1924, the employers' application came on for hearing, and an order was made for the redemption of the award of £1 per week. The workman appealed, contending that the Act of 1923, having come into operation before the hearing, the additions were "for all purposes" part of the payment, and the employer could only redeem the whole sum of £1 15s. per week.

DECISION.—That by s. 38 (2) (*b*) and (*c*) of the Interpretation Act, 1809, the coming into force of the Act of 1923, on 1st January, 1924, did not affect rights previously existing, and that, as the employer had previously filed his application to redeem the award of £1 per week, that was the sum which he was entitled to redeem, and, further, that the Interpretation Act, 1889, operated in favour of the workman as well as of the employer, and therefore the right of the workman to receive the 15s. per week still continued. (Case reported 68 SOL. J. 813.)

Davies v. *Gwauncaegurwen Colliery Co. Ltd.* (C.A.: Pollock, M.R., and Warrington and Atkin, L.JJ., 22nd July, 1924).

FACTS.—A workman, employed as a screensman in a colliery for many years, had been in the regular habit of going to a disused part of the screens in the rear of his working place to hang up his coat, and also to eat food during meal intervals. The place, having become dangerous, was fenced off, and the workman was warned not to go there, but he continued to do so, and, arriving at the colliery before daylight, went there and fell into a deep hole and was killed.

DECISION.—That the accident was due to disobedience of a prohibition, and that the prohibited act was not done for the purposes of and in connection with the employer's trade or business, and, therefore, did not arise out of the employment. (Case reported 68 SOL. J. 882; 40 T.L.R. 859.)

III.

DECISIONS ON CASES OF INDUSTRIAL DISEASE.

Turton v. *East Barnsley Colliery Co.* (C.A.: Lord Sterndale, M.R., and Warrington and Scrutton, L.JJ., 19th November, 1920).

FACTS.—In arbitration proceedings, arising out of the case of a workman who was suffering from miner's nystagmus, the county court judge requested a medical referee to explain the grounds on which he had (before the institution of the arbitration proceedings) given a certificate in the following terms: "I allow the appeal of the East Barnsley Colliery Company Limited against the certificate of disablement granted to Reuben Turton on the 30th January, 1920." The medical referee explained that he had come to that decision in favour of the company "as the man himself definitely stated that when he started work with them he had not got over the nystagmus which he had contracted whilst working for his previous employer." The county court judge then held that the preliminary objection that the certificate of the medical referee was conclusive was bad, and that the arbitration must proceed. The company appealed.

DECISION.—The appeal must be dismissed. The medical referee had no jurisdiction to deal with the question of responsibility. All that he had to consider on a reference to him under s. 8 (1) (*f*) of the Workmen's Compensation Act, 1906, was whether the certifying surgeon was right or wrong in certifying that on the ———day of———the man was suffering from disease, and was disabled, and if the certifying surgeon had fixed a date of disablement, whether he was right or wrong in fixing that date of disablement. (Case reported 1921, 1 K.B. 369; 90 L.J., K.B. 267; 124 L.T.R. 439; 13 B.W.C.C. 292; 1921, W.C. & Ins. Rep. 31.)

Archibald Russell Ltd. v. *Corser* (H.L.: Lord Birkenhead, C., Lords Finlay, Dunedin, Atkinson and Shaw, 17th December, 1920).

FACTS.—A workman contracted from his work ulceration of the corneal surface of his eye, and the eye was removed on the 9th June, 1919. He then applied to the certifying surgeon of the district for a certificate under s. 8 (1) of the Act, who gave a certificate as follows: "I . . . hereby certify that having personally examined James Corser on the 3rd July, 1919, I am satisfied that he is suffering from a disease to which the Workmen's Compensation Act applies (namely, ulceration of the corneal surface of the eye due to tarpitch, bitumen, mineral oil or paraffin or any compound product or residue of any of these substances), and is thereby disabled from earning full wages at the work at which he has been employed, and I certify that the disablement commenced on the 21st day of April, 1919." As "leading symptons of disease" the surgeon certified "He has lost his right eye as the result of corneal ulceration." The employers submitted that on the language used in the certificate it was bad, *inter alia*, because the certifier could not certify on the

basis of examination as required by the section that "the workman is suffering" from the disease since the eye had already been removed.

DECISION.—That the question, being one entirely for the certifying surgeon, the certificate must be deemed to be valid. (Case reported 65 SOL. J. 239; 1921, A.C. 351; 90 L.J., P.C. 77; 124 L.T. 548; 13 B.W.C.C. 476; 1921, W.C. & Ins. Rep. 103; 37 T.L.R. 244.)

Brindley v. *Shelton Iron, Steel & Coal Co. Ltd.* (C.A.: Lord Sterndale, M.R., and Warrington and Atkin, L.JJ., 14th February, 1923).

FACTS.—A workman, on re-entering the service of his employers, signed a document in which he falsely stated that he had not previously suffered from nystagmus. In arbitration proceedings the county court judge accepted the man's statement, that he had signed the document without knowing the nature of its contents, and made an award in his favour. The employers appealed.

DECISION.—That by s. 8 (1) (*b*) of the Act it was intended that the representation should be made "wilfully" as well as falsely, and that the county court judge was entitled to come to the conclusion at which he had arrived. Appeal dismissed. (Case reported 128 L.T.R. 783; 16 B.W.C.C. 1; 1923, W.C. & Ins. Rep. 151.)

Allmark v. *White* (C.A.: Lord Sterndale, M.R., and Warrington and Atkin, L.JJ., 14th February, 1923).

FACTS.—A baker, suffering from dermatitis, was for a period totally incapacitated and received compensation under s. 8 of the Act of 1906. He subsequently became capable of doing any work except work in the particular process in which the disease had been contracted. Having regard to S.R.O., 1918, No. 287 (2), which provided that under such circumstances a person suffering from dermatitis should receive no compensation, further compensation ceased as the result of arbitration proceedings in the county court. The workman appealed.

DECISION.—That there were no grounds for suggesting that when a man became entitled to compensation under s. 8 of the Act, para. 2 of the Order of 1918 was inapplicable; and that the county court judge could have come to no other conclusion than that at which he had arrived. Appeal dismissed. (Case reported 92 L.J., K.B. 1084; 129 L.T.R. 114; 16 B.W.C.C. 8; 1923, W.C. & Ins. Rep. 388.)

Mullineux v. *Florence Coal and Iron Co. Ltd.* (C.A.: Lord Sterndale, M.R., and Warrington and Scrutton, L.JJ., 8th May, 1923).

FACTS.—In November, 1922, a workman, who had contracted nystagmus while in the employment of a colliery company, applied for compensation under s. 8 (1) of the Act of 1906. On entering their employment in July, 1922, he signed a declaration that he had not previously suffered from certain industrial diseases, including nystagmus. In 1919, on leaving the army, he had had trouble with his eyes and was told by two doctors that he was not suffering from nystagmus. A third doctor, whose name was not ascertained, subsequently informed him that he was suffering from nystagmus. The man himself admitted when he was informed in November, 1922, that he was suffering from nystagmus, that he must have suffered from it before, as the symptoms were the same as those in 1919. The county court judge, in making an award in favour of the employers, found that the man had, by signing the declaration, lost any right to compensation. He did not, however, find that the man had made any false statement.

DECISION.—That, though there was evidence in November, 1922, that the man admitted that the symptoms were the same, there was no evidence upon which the county court judge could find that in July, 1922, the man had made a deliberate false statement, and that an award must be made in his favour. (Case reported 129 L.T.R. 404; 16 B.W.C.C. 88; 1923, W.C. and Ins. Rep. 253.)

IV.

MISCELLANEOUS DECISIONS.

Harper v. *Dick, Kerr & Co.*. (C.A.: Lord Sterndale, and Warrington and Scrutton, L.JJ., 18th November, 1920).

FACTS.—A workman commenced arbitration proceedings in respect of an accident, but the county court judge decided that the accident did not arise out of and in the course of his employment. The workman subsequently died and his dependants made an application for compensation under the Workmen's Compensation Act of 1906, alleging that his death resulted from the accident. The county court judge held that, having regard to the previous application, the matter was *res judicatæ*, and that he had, in consequence, no jurisdiction to deal with the application before him. The defendants appealed.

DECISION.—That the matter was not *res judicatæ* as the previous litigation on which the decision was reached was between parties entirely different from those concerned in the present litigation. The appeal must be allowed and the case must be re-heard. (Case reported 90 L.J., K.B. 1313; 124 L.T.R. 438; 13 B.W.C.C. 250; 1921, W.C. & Ins. Rep. 93.)

Jones v. *S. R. Anthracite Collieries, Ltd.* (Before Lord Sterndale, M.R., and Warrington and Scrutton, L.JJ., 24th November, 1920).

FACTS.—A county court judge was requested to adjourn the proceedings in a case arising under the Workmen's Compensation Act, 1906, in order that the applicant might put in certain documents. No adjournment took place, and the applicant appealed for a new trial.

DECISION.—The county court judge had furnished no statement whatever of the ground for his refusal to adjourn the case, nor even any statement that an application had been made to him for an adjournment. Any question of adjournment was a matter within the discretion of the county court judge, and the court would not interfere, if it appeared to them that such discretion had been exercised in a way which showed that all necessary matters had been taken into consideration. In the present case, if the county court judge had refused to grant the adjournment on grounds which showed that he had considered certain points in the case, and had, nevertheless, come to the conclusion that it would be unreasonable for him to grant an adjournment, the court would not have interfered. No reason, however, appeared for his refusal to do so. The case must therefore be re-tried. (Case reported 90 L.J., K.B. 1315; 124 L.T.R. 462; 13 B.W.C.C. 346; 1921, W.C. & Ins. Rep. 57.)

Turner v. *Kingsbury Collieries, Ltd.* (K.B.D.: McCardie, J., 6th May, 1921).

FACTS.—A claim, which was made in the name of a workman, against the employers (a colliery company), for compensation under the Workmen's Compensation Act, 1906, was dismissed on the ground that the accident did not arise out of or in the course of the employment. The employers applied for an order that the society which had taken the proceedings on behalf of the workman should pay the costs thereof. The county court judge made the order and the society applied to a judge under s. 127 of the County Court Act for a writ of prohibition against the county court judge, and the Colliery Company on the ground (*inter alia*) that the county court judge had no jurisdiction to make any order against them for costs.

DECISION.—That the application must be refused, as the decision of which complaint was made was given by the county court judge as arbitrator, and the Act of 1906 meant to provide that all appeals from the awards of county court judges as arbitrators under the Act should go direct to the Court of Appeal and to that tribunal alone. (Case reported 90 L.J., K.B. 1132; 125 L.T.R. 625; 14 B.W.C.C. 249; 1921, W.C. & Ins. Rep. 193; 37 T.L.R. 713.)

Thomson & Co. v. *Mackay* (H.L.: Buckmaster, Sumner, Parmoor, Wrenbury, and Carson, 24th June, 1921).

FACTS.—The respondent was a member of the Barry Dock Pilots' Association, and was paid for his services by a fixed share in the earnings of all the pilots, which were pooled. He met with an injury by accident and his claim against the shipowners for compensation was resisted on the ground that he was not a "workman." It was agreed at the hearing (1) that the respondent had resumed his occupation as a dock pilot since the war within ten weeks of the happening of the accident, and that his earnings during that period was £6 a week; (2) that the amount earned by the members of the Association amounted to £6 a week, and that the average amount earned by a person in the same grade and employed at the same work, was £6 a week. The county court judge held that the respondent's remuneration did not exceed £250, and made an award in his favour on the basis that the man was a workman. The employers appealed.

DECISION.—That, although it was proved that the respondent had received £6 a week for the ten weeks he had been working, that did not preclude the county court judge from considering whether there might not be breaks in the regularity of the employment which would, in fact, bring his remuneration below £250 in the year. It was a question of fact for the arbitrator, and, as he had materials upon which he could draw his conclusion, this House would not interfere with his award. (Case reported 65 SOL. J., 695; 1921, W.N. 230; 90 L.J., K.B. 1337; 126 L.T. 33; 14 B.W.C.C. 143; 1921, W.C. & Ins. Rep. 213; 37 T.L.R. 861.)

Jaques v. *Owners of the Steam Tug "Alexandra"* (H.L.: Lords Buckmaster, Sumner, Parmoor, Wrenbury, and Carson, 4th July, 1921).

FACTS.—The applicant's husband was employed by the respondents as the master of a steam tug of about 35 tons, which worked on the River Humber. Owing to the general rise in wages

he was earning more than £250. During towing operations the tug capsized and her master and two of her crew of three men were drowned. The county court judge found that the deceased man's employment with the respondents was not by way of manual labour, and that, although in fact, he did, and was expected to do, under his contract of service, a good deal of manual work, such as steering the tug and assisting in washing, painting, and coaling her, this did not affect the true character of his employment. Accordingly he found that the deceased man was not a "workman" within the Act, and dismissed the claim. The Court of Appeal affirmed his decision, and the widow appealed.

DECISION.—That the county court judge had applied the true test by considering what was the substantial character of the man's employment. He had found that the real and substantive work which the deceased man was employed to do was to work as master of this tug, which he found was work not by way of manual labour. That finding was one purely of fact, and there being evidence to support it and no misdirection, the award could not be interfered with. (Case reported 65 SOL. J., 752; 1921, 2 A.C. 339; 90 L.J., K.B. 1325; 14 B.W.C.C. 148; 37 T.L.R. 881.).

Guest v. *Ibbotson* (C.A.: Lord Sterndale, M.R., and Warrington and Scrutton, L.JJ., 7th February, 1922).

FACTS.—The applicant was badly injured on 6th November, 1920, while riding upon the respondent's motor tractor, his hand being caught in the machinery. He brought a claim for compensation in Selby (Yorkshire) County Court, to which the respondent put in a defence, stating that at the time of the accident the applicant was not in his employment. At the hearing, the applicant was asked in cross-examination, whether he had not been dismissed from the employment three days before the accident, and the respondent and others gave evidence that that was so, and that the applicant was only upon the tractor because he had asked to be allowed to ride home upon it. An award having been made in favour of the respondent, the applicant subsequently applied to the same court for a new trial on the grounds (1) that the respondent's defence had been understood by him to mean that he had never been in the respondent's employment, and that the question as to his having been dismissed had taken him completely by surprise; (2) that he had two witnesses to call who could prove that he was still in the employment on the 6th November, 1920. The county court judge held that the applicant had been surprised, in that the defence should have stated that the applicant was not in the employment, or, alternatively that if he had been in the employment, he had been dismissed. In view of that fact, and of the statement that two fresh witnesses would be called, he made an order for a new trial. The respondent appealed.

DECISION.—That the respondent's pleading was sufficient, and that the applicant could not raise the plea of surprise simply because the matter had been presented to him in a way he had not anticipated. Further, to support the plea of surprise, it must also be shown that the surprise had led to a miscarriage of justice, and the applicant should have furnished substantial proof not merely that there was fresh evidence, but that it was of so weighty and serious a character as to justify the order for a retrial. (Case reported 66 SOL. J. 298; (1922) W.N. 72; 91 L.J., K.B. 558; 126 L.T. 738; 15 B.W.C.C. 43; (1922) W.C. & Ins. Rep. 131; 38 T.L.R. 325.)

Hunter v. *Simner* (C.A.; Lord Sterndale, M.R., and Atkin and Younger, L.JJ., 7th April, 1922).

FACTS.—On appeal by the applicant from an award of a deputy county court judge, made in favour of the employer, the Court of Appeal directed that the award should be set aside, and that the matter should go back to the county court judge for a new trial. The matter then came before the county court judge himself. The county court judge being doubtful as to the position offered to proceed with the hearing if both parties agreed to waive the points in respect of which he was doubtful, and if they would agree to be bound by his decision. The respondent declined to do so, and the appellant appealed to the Court of Appeal for confirmation of their order. The appeal was allowed.

DECISION.—That notwithstanding that the county court judge who hears a claim for compensation under the Workmen's Compensation Act, 1906, is an arbitrator, the ordinary rules as to appeals from arbitration do not apply. The combined effect of rule (4) of Sched. 2 of the Act, and rules 4 and 20 (*d*) of Ord. 58 is that an appeal lies from such county court judge to the Court of Appeal, and upon that appeal the court can make an order for the county court judge to re-hear the matter, or such other order as it may think fit. A county court judge, sitting as arbitrator under the Act, is sitting in his official capacity as judge of the court, and not as an individual. Therefore, where a claim has been heard and an award made by a deputy judge, such award will represent the decision of the judge himself, who in the event of a re-hearing being ordered, will be competent to re-hear and adjudicate upon the matter. (Case reported 66 SOL. J. 487; 91 L.J., K.B. 581; 127 L.T.R. 342: 15 B.W.C.C. 91; (1922) W.C. & Ins. Rep. 99.)

Haynes v. *Aldridge Colliery Co. Ltd.* (C.A.: Pollock, M.R., Scrutton, L.J., and Astbury, J., 27th November, 1923).

FACTS.—An award was made in favour of a workman, who had been suffering from miner's nystagmus, on the basis of partial incapacity. Correspondence had passed between the parties with a view to defining whether the issue was one of total or partial incapacity. From this correspondence it appeared that the workman was not prepared to admit whether the hearing was based on total incapacity or not. The county court judge, in making his award, decided that the applicant was to have no costs as he failed on issue of total incapacity.

DECISION.—That from the note of the county court judge it appeared that he had, in making the order as to costs, come to the conclusion that (1) the workman was partially incapacitated and the employers had failed in saying that he was not, and (2) that the workman spent considerable time in trying to prove that he was totally incapacitated and had failed; that he appeared to have acted amply within his discretion as to costs, and had not exercised it improperly or contrary to any rules. Appeal dismissed. (Case reported 130 L.T.R. 282; 16 B.W.C.C. 183; (1924) W.C. & Ins. Rep. 64.)

McCarthy v. *the "Melila"* (*owners of*) (C.A.: Pollock, M.R., Scrutton, L.J., and Astbury, J., 28th November 1923).

FACTS.—A workman, while trimming coal on board a vessel, was buried under some coal, and was sent to hospital. In arbitration proceedings it appeared from the medical evidence that he suffered from a disease of the heart known as mitral stenosis. The county court judge reserved judgment, and the registrar afterwards sent letters to both parties, saying that the judge would be glad to have quotations from standard medical works on the question whether mitral stenosis might be accentuated by traumatic neurasthenia. The representatives of the applicant complied with the request and supplied the respondents with the information which they had furnished to the judge. The respondents did not answer the letter written by the registrar. Judgment was delivered in due course and an award was made in favour of the applicant. The respondents appealed, one of the grounds of the appeal being that the evidence sought and admitted by the arbitrator between the adjournment of the case and the delivery of the judgment was inadmissible and improperly received.

DECISION.—That no objection having been taken to the letter at the time of its receipt or when the judgment was delivered it was too late for objection to be taken to it; and that the various other grounds having been considered, the appeal must be dismissed. (Case reported 130 L.T.R. 445; 16 B.W.C.C. 222; 1924, W.C. & Ins. Rep. 76.)

Sage v. G. K. Stothert & Co., Ltd. (C.A.: Lord Sterndale, and Warrington and Scrutton, L.JJ., 4th May, 1923.)

FACTS.—In 1921 a shipwright fell thirty feet from a staging, suffering severe injuries to his pelvis and spine. He made a remarkable recovery, and in arbitration proceedings, as a result of the medical evidence, the county court judge held that he was partially incapacitated for work only, being capable of doing light work other than that involving stooping, lifting or jarring. In making his award, he stated that "even though the whole field of light work is not open to applicant, I am of opinion that there are still open to him fields of employment (other than those specially adapted only to quite exceptional cases, dependent on quite exceptional employers) his failure to obtain work in which is due to circumstances unconnected with the accident." The workman appealed.

DECISION.—That the words in parenthesis showed that the county court judge had clearly in his mind the distinction which was to be found in *Cardiff Corporation* v. *Hall* (1911, 1 K.B. 1009; 80 L.J., K.B. 644; 104 L.T.R. 467; 4 B.W.C.C. 159; 27 T.L.R. 339) and that the appeal failed and must be dismissed. (Case reported 129 L.T.R. 602; 16 B.W.C.C. 74; 1923, W.C. and Ins. Rep. 244.)

Lepper v. *Burnwell & Co.* (C.A.: Pollock, M.R., and Warrington and Atkin, L.JJ., 18th July, 1924);

FACTS.—An award was made by a county court judge in favour of the respondent employers on the ground that the particulars of claim showed that the applicant was not entitled to succeed. Before, however, making the award, the county court judge had enquired whether the applicant's counsel had anything to add to the facts as disclosed by the particulars of claim, and had received the answer "no." The applicant appealed.

DECISION.—That it was wholly unsatisfactory to deal with a case upon the crude facts as stated in the particulars, and that the case must be remitted to the county court for the facts to be fully elicited at a re-hearing. (Case reported 68 SOL. J. 882.)

Correspondence.

Learning the New System of Conveyancing.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Your remarks on my letter in your issue of last week were perhaps more devoted to me personally than the facts (of which of course you are not aware) really warrant.

You would be astonished, as I have been, at the enquiries that have recently been made of me by solicitors of quite considerable standing as to my opinion whether the new system would really come into force or not.

It should not be forgotten that when the present Act was passed solicitors bought books and began to study them. When they learned that the Act would not do is it to be wondered at that they gave up further attempts to learn the new system until the time when the final proposals were enacted ?

Having regard to what you say concerning Provincial Law Societies perhaps I may state that I have been on the committee of one of them for a good many years, and know to what extent those societies have taken an active interest in the matter. The committees which have dealt with the matter form only a fractional number of the members of the societies, and I venture to assert that by far the greater number of country solicitors have nothing but the most vague ideas of even the main principles of the bills.

Familiarity will, as you say, come by practice, but unless we have a reasonable time, which I put at twelve months from the passing of the Acts, to assimilate them and the text and precedent books the public will suffer.

Even those solicitors who have devoted as much attention to the bills as you have will find it difficult if sufficient time be not allowed to those who, being more interested in practice than in theory, have deferred their studies until the Acts are passed.

The whole question is as to what is a reasonable time. The text and precedent books will themselves, perhaps, hardly be reliable at first. The present proposals do not, I consider, give sufficient time. You seem to think otherwise, although your statements that "it seems" that there will be sufficient interval, and that "probably" the text and precedent books will be forthcoming before the commencement of the new system are hardly re-assuring. It would be easy to ascertain the views of the country solicitors. Reply postcards would do it.

I owe you an apology, if I am wrong, but while the point remains one of opinion, I shall with all deference to you and your excellent journal still assert that you are out of touch with country solicitors on the point.

A Country Solicitor.

24th December.

[We fully appreciate our correspondent's point, and are much indebted to him for his interesting letter. We offer some hints this week in "A Conveyancer's Diary" to country practitioners curious to make themselves more fully acquainted with the New Law of Property.—Ed. *S.J.*]

Law of Property Act, 1922, and Amendment Act, 1924.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—I write this note to support your view that these Acts should be allowed to come into force on the 1st January, 1926, without further postponement. We have now a clear year in which to study the new system, and I think it will be much more conveniently studied from these two Acts than from the Consolidation Acts when passed. If we wait to do our study from *them* we shall have to wade through an enormous mass of matter in order to pick out that which is novel, whereas at present we have only to read the Acts of 1922 and 1924. As the Consolidation Acts are to be purely consolidating, we can rely on the draftsmen to make no substantial change in the existing statutes beyond what appears in the Acts of 1922 and 1924. It will be quite sufficient to have the provisions of these Acts in our minds when the new system comes into force, and then as each point arises in practice it will be time enough to look into the text-books to find what special guidance they afford.

Moreover it is a dangerous matter to rely on text-books in preliminary study, as this may lead to confusion between the provisions of the statutes and the opinions of the commentators, two matters of very different authority.

It is almost universally agreed that the alterations are good; the sooner therefore that they are brought into operation the better, provided the profession has sufficient time to become acquainted with them, and I feel sure that a year is ample, and more would be dangerous.

Any change to come into force more than a year ahead will not generally be studied until that period is well advanced, and this is all for the best. If it were studied early in the interval, there would be two dangers, one that the new law would be partly forgotten before it came into force, and the other that some provisions would be assumed to be in force before they actually became so.

It may be said that further study of the new system would lead to further improvement, but this process might go on indefinitely, whereas a few years of practical experience will clearly show any defect it may have, and an amending Act or Acts can then be passed.

It would be a convenience to those who possess the Amendment Bill of last Session if you would indicate exactly how the Amendment Act as now passed differs from that Bill.

J. A. Meedmore.

6, New Burlington Street,
London, W.1.

The Solicitors' Bookshelf.

Immunity of State Ships. By Dr. N. Matsumann, Professor of Law in Tokyo University. Richard Flint & Co.

The distinguished Japanese jurist who produces this little book must be congratulated at once on its excellent English and on the remarkably interesting character of its contents. His theme, of course, is the burning question whether or not ships owned by a Sovereign State should be exempted from the ordinary liabilities of tort-feasors on the High Seas. Since the Soviet Government proceeded to nationalise all Russian vessels, this question has become far more pressing than it was before. Those who desire a brief but adequate review of all the law on the point can be recommended to read this little book.

The Law as to C.I.F. Contracts. By H. Gortein, of Gray's Inn, Barrister-at-Law. Effingham Wilson.

In this small booklet an attempt has been made to set forth the special law governing those commercial transactions which have come to be known as C.I.F. contracts. It is, of course, a branch of the law relating to the sale of goods, but for various reasons it has assumed of late an importance of its own. The law reports of recent years are full of decisions relating to such contracts, and some famous judgments have sketched the large outlines of a new and important aspect in the wide domain of the Law Merchant. For its intrinsic importance alone the subject merits special treatment. Mr. Gortein has endeavoured to afford in a condensed form the treatment required, and his work as pioneer in a new field is deserving of commendation.

POLITICAL CRIME. By W. G. CARLTON HALL, of Lincoln's Inn, Barrister-at-Law. George Allen and Unwin, Limited.

This work is a short summary of certain aspects of criminal law, constitutional law and court martial law. It had an interesting origin. In 1919, as an officer of the Territorial Force not yet disembodied and demobilized, its author was sent on duty to Ireland, and served for some months in that distressful country. He held special appointments which brought him into personal contact with political crime on a large scale. As a result he felt forced to consider the first principles of jurisprudence so far as they deal with political crime, and the result of his researches are lucidly related in this legal essay.

CRIMINAL LAW IN A NUTSHELL. By MARSTON GARSIA, of the Middle Temple, Barrister-at-Law. Sweet & Maxwell, Ltd.

Mr. Garsia is not only a law reporter of "mettle and renown," but he is also the author of a very remarkable series of students' revision books, known as the "Nutshell Series." These compress most successfully into the minimum of space the essentials of whole spheres of law. The present book, which has reached a second edition, is an admirable example of Mr. Garsia's methods, and is extremely well done.

New Orders, &c.

County Court Changes.

THE COUNTY COURTS ORDER IN COUNCIL 1924.

Pursuant to section 5 of the County Courts Act, 1903, it is hereby ordered as follows:—

1. This Order may be cited as the County Courts Order in Council, 1924, and shall come into operation on the 1st day of January, 1925.

2. The County Courts Order in Council, 1904, and the County Courts Extended Jurisdiction (Amendment) Orders, 1919 to 1924, shall be revoked.

3. Actions in which the plaintiff claims a sum exceeding £50 by virtue of the said Act, commenced in the County Courts named in the third column of the Schedule to this Order, shall be tried in the County Courts named in the second column of that Schedule.

M. P. A. Hankey.

17th December.

SCHEDULE.

County Court Circuits. 1.	Courts in which Actions are to be tried. 2.	Courts from which Actions are to be transferred for Trial. 3.
Circuit No. 1	Newcastle-upon-Tyne ..	Blyth, Gateshead, Morpeth, North Shields.
Circuit No. 17	Great Grimsby	Barton-on-Humber.
Circuit No. 19	Derby and Long Eaton ..	Ashbourne, Matlock, Wirksworth.
Circuit No. 23	Northampton and Towcester	Daventry.
Circuit No. 26	Hanley and Stoke-upon-Trent	Burslem, Leek, Newcastle-under-Lyme, Stone, Tunstall, Uttoxeter.
Circuit No. 36	Oxford	Abingdon, Thame, Witney.
	Warwick	Southam.
Circuit No. 38	Romford	Grays Thurrock.
Circuit No. 46	Horsham	East Grinstead.
Circuit No. 50	Chichester	Arundel.
	Brighton	Haywards Heath.
Circuit No. 51	Southampton	Bishops Waltham, Romsey.
Circuit No. 52	Bath	Calne, Chippenham.
Circuit No. 58	Exeter	Crediton, Okehampton.
Circuit No. 59	Falmouth and Truro ..	St. Austell.
	Redruth	Helston.

[*Gazette*, 19th December.

Ministry of Health.

The Minister of Health has made Regulations entitled the Public Health (Meat) Regulations, 1924 (S.R. & O. 1924, No. 1432) as to the slaughter of animals for human consumption, the marking of inspected meat and the conditions of storage, handling, transport, etc., of meat.

The Minister has also made an Order entitled the Rural District Councils (Slaughterhouses) Order, 1924 (S.R. & O. 1924, No. 1431) conferring on all Rural District Councils the powers of an urban authority in regard to slaughterhouses.

Copies of the Regulations, the Order and the covering Circulars (Nos. 547 and 552 respectively) dated the 29th December, 1924, may be purchased either directly from H.M. Stationery Office, Adastral House, Kingsway, W.C.2; 28, Abingdon Street, Westminster; York Street, Manchester; 1, St. Andrew's Crescent, Cardiff, or through any bookseller.

Ministry of Health,
Whitehall, S.W.1.
29th December, 1924.

Law Societies.

To Secretaries.—Reports of meetings, lectures, etc., to ensure insertion in the current number, should reach the office *not later* than 4 p.m. Wednesday.

Society of Comparative Legislation.

The Society of Comparative Legislation has the support of the four Inns of Court, The Law Society and the Royal Colonial Institute, besides a number of Governments throughout the Empire, in the furtherance of its work and objects. Chief among these is the publication of an annual review of legislation passed by more than eighty legislative bodies throughout the Empire and by those of the United States of America. The society also publishes from its chambers at 1, Elm Court, Temple, a journal edited by Sir Lynden Macassey, K.C., and Mr. C. E. A. Bedwell, comprising articles on subjects under discussion for legislation, and on the working and effect of laws in different parts of the world, with frequent reference to problems of international law. The current number contains the following items: City Manager Government in American Municipalities; Notes on Imperial Constitutional Law; Recent Decisions of the United States Supreme Court affecting the Rights of Aliens; The Colour Bar Decision in the Transvaal; Custom in the Punjab; The Joint and Equal Guardianship of Infants in various Legal Systems; International Status of Mandatory of League of Nations, High Treason against Mandatory Authority; The Antiquities Law of Palestine; The Consolidation of the Law in Victoria; The Present Situation with regard to the Privileges of Foreigners in the Near East; Immunity of State Ships; The Constitutional Changes in Northern Rhodesia; Law Codification in China; The Reorganization of the Zanzibar Courts; The Decisions of the Anglo-German Mixed Arbitral Tribunal, etc. These titles serve to illustrate the range of studies carried out under the Society's auspices.

Law Students' Journal.

To Secretaries.—Reports of meetings, lectures, etc., to ensure insertion in the current number, should reach the office *not later* than 4 p.m. Wednesday.

The Law Society's School of Law.

The First Term of the year will open on 8th January; on the 8th and 9th, the Principal and the Vice-Principal will be in their room to advise students as to their plans for the term. Copies of the prospectus and time-table, which give full information as to the subjects of the lectures and classes for the term, may be obtained on application to the Society's office. The subjects to be dealt with will be, for intermediate students (i) public law (the Vice-Principal), (ii) crimes, criminal and civil procedure (Mr. Landon), (iii) the general course (the Vice-Principal and Mr. Formoy), and (iv) the outline of accounts and book-keeping (Mr. Dicksee). The subjects for final students will be (i) equity and procedure in the Chancery Division (Mr. Danckwerts), (ii) private international law, followed by criminal law and divorce (the Principal), (iii) practice in the King's Bench Division (Mr. Chorley). There will also be special courses for those intending to read for the honours examination, in (i) law of contract (Mr. Danckwerts), and (ii) conveyancing (Mr. Formoy). A new course on Roman law (Mr. Landon) will be commenced

for the intermediate LL.B. degree of the University of London; and a course on elementary equity will be taken by the Vice-Principal for students enrolled under the exemption order.

Students desiring to enrol under the exemption order should communicate with the Principal for full particulars not later than the 9th instant. The order provides that students who, before being articled, attend a prescribed course of lectures and classes for one year to the satisfaction of the Council may be articled for four years only.

Copies of the regulations governing the three studentships offered by the Council for award in July, 1925, may be obtained on application to the Society's office. Three similar studentships are also offered by the Council for award in July, 1926.

A Moot will be held at the Society's Hall on Wednesday evening, 28th January, for the decision of an appeal on a point of law in a case of libel.

Two lectures (open to students and members of the Society without fee) on "The Preparation and Working-up of a Brief" will be delivered at the Society's Hall, the first by the Principal on Monday, 12th January, at 4 p.m., and the second by Mr. J. M. Gover, K.C., on Tuesday, 13th January, at 4.15 p.m. Lord Justice Atkin will take the chair at the first lecture, and the Vice-President of the Society (Mr. Herbert Gibson) at the second lecture.

The annual meeting of the members of the Students Rooms will be held on Monday, 12th January, at 6 p.m. Mr. R. W. Dibdin will preside. All articled clerks, whether or not members of the rooms, are welcome.

Legal News.

Business Change.

Mr. JOHN GRAHAM, of the firm of Messrs. Mounsey & Co., Solicitors, Carlisle, has retired from practice, and Mr. GERALD WILBERFORCE BOWMAN, son of the senior partner, has been taken into partnership. The practice of the firm will be carried on in future by Mr. Anthony Nichol Bowman, Mr. John Adam Morton and Mr. Gerald Wilberforce Bowman, under the name of "MOUNSEY, BOWMAN & MORTON."
1st January, 1925.

Dissolutions.

NAUNTON & MCMURDY, Solicitors, 14, Soho-square, W.1, 19th day of December, 1924. [*Gazette*, 26th Dec., 1924.

Mr. WILLIAM CHARLES CROCKER, Mr. VERNON S. WOOD, Mr. WALTER ANGUS CROCKER and Mr. THEODORE LORD, practising under the firm name of Messrs. William Charles Crocker, at 21, Bucklersbury, London, E.C.4, beg to announce that they have taken into the partnership their Manager, Mr. STANLEY J. LOE, as from the 1st January, 1925.

Obiter.

At the Mansion House on the 22nd ult., says *The Times*, before the Lord Mayor, David Berwyn Davies pleaded "Guilty" on a summons issued at the instance of The Law Society for having, for payment, prepared a deed of separation under seal, he not being a duly certificated solicitor. Mr. R. H. Humphreys, who appeared for The Law Society, said the defendant had served his articles and passed the final examination, but for reasons unnecessary to relate, the Society had twice refused to admit him, and their decision had been supported, on appeal, by the Master of the Rolls. He was now employed in the service of a solicitor. For preparing the deed in question he received a fee of three guineas. In his attestation to the deed he described himself as a solicitor. Mr. Maurice Barnett, barrister, who defended, said the defendant was still awaiting admission as a solicitor. Meanwhile, he was a fully qualified man, and no one had been prejudiced by what he had done. His war record had been exceptionally distinguished. The Lord Mayor imposed a fine of £10, with £2 2s. costs.

The Rev. J. H. J. Ellison, the Rector of St. Michael's, Cornhill, where in the vestry the recent election of Common Councilmen for Cornhill Ward took place, gave some interesting details of the excavations now in progress at the northern end of the church. He said there were three separate Roman walls—one immediately under the tower, another at the east end, and a third below the altar. There were also what were considered likely to be the remains of an earlier church erected on a Roman foundation which had been destroyed by fire in the days of Boadicea. Under the church there remained portions of the original Roman fort round which London grew up. All this showed that Cornhill was one of the most ancient parts of London.

Sentence of one month's imprisonment, with hard labour, was passed at the North London Police Court on Monday, on William Francis, twenty-two, a labourer, of Poyser-street, Bethnal Green, charged on remand with snatching a handbag from a young woman in Manor-road, Stoke Newington. The magistrate (Mr. S. Pope) said the prisoner had been guilty of highway robbery with violence, and he would have given him a very stiff sentence if he had stolen from an old lady instead of a young woman.

"After hearing the evidence in this case I believe the defendant; she will be discharged," said Mr. Chancellor at Marlborough-street Police Court last week, when Mabel Footring, thirty-two, of Northumberland-mansions, Northumberland-street, W., wife of a hosiery importer, was charged with soliciting in Regent-street, W. Mr. Herbert Muskett was for the Commissioner of Police, Mr. F. Freke Palmer defending. The accused gave evidence emphatically denying the charge.

Thieves visited the shop of Mr. William Edwards, fruiterer, of Plumstead-road, Plumstead, on the 27th ult., and stole the safe, which weighed about 1 cwt. The safe contained three £10 Bank of England notes, twenty £5 Bank of England notes, and a number of £1 and 10s. notes. The thieves entered the shop by forcing the front door.

An order was made at Bow-street Police Court on Monday for the extradition to Germany of Ludwig Boeck, fifty-two, a director, of Am Park, Schoneberg, Berlin, on charges of forgery and obtaining money by false pretences in that country. The defendant denied that he had committed any forgery.

"A man who is drunk in charge of a horse and trap is a public danger," said Mr. Cairns at the Thames Police Court on the 27th ult., in sentencing a man named Charles Lamb to one month's imprisonment for this offence.

Mr. Henry Swinburne, a well-known solicitor of Gateshead, died on Christmas Day, aged sixty-three. His father was Town Clerk of Gateshead for many years, and his brother now holds that position.

The Faculty of Insurance entertained Sir Kingsley Wood, solicitor, at the Holborn Restaurant on Friday, on his appointment as Parliamentary Secretary of the Ministry of Health.

It is proposed to erect a memorial to John Hampden at Thame, Oxon.

PLOT SUGGESTION IN ROBBERY CHARGE.

Richard Arthur George Hall, 23, motor mechanic, Joseph Stafford, 21, painter, and Florence Lippitt, 18, shorthand typist, were remanded at Birmingham yesterday, the girl only being granted bail, on a charge of being concerned together in stealing £118 from the office of the girl's employer, Mr. Jacob Freedman, financier and jeweller, of 41, Dalton-street, Birmingham.

Chief Detective-superintendent Burnett, in asking for a remand, said evidence would be produced that on Saturday morning Stafford telephoned to the girl, and later both the man and the girl were seen together near to Mr. Freedman's office. A police officer visited the premises in the afternoon and found the girl lying on the floor with a towel round her mouth and her hands tied behind her back. Search revealed £16, concealed behind some boards. The girl was taken into custody and charged with larceny of money belonging to her master. Among her papers Stafford's address was found, and he was arrested on Saturday night. Hall was arrested on Sunday night.

The officer added that evidence would also be forthcoming that a £10 note, part of the proceeds of the theft, was changed by Hall and another man. The officer alleged it was arranged by the girl and Stafford that the girl should be bound as a blind to the police when they discovered the money was missing. Another man, not in custody, had been associated with the prisoners. Whether he took an active part in the plot was not known.

—*Times.*

ALLEGED BOGUS SWEEPSTAKE.

Before Mr. Francis, at the Westminster Police-court, on Saturday, James R. Holbeck, *alias* Ashford, 24, clerk, from Guernsey, was charged on remand with obtaining various sums of money by fraud and false pretences in connection with a bogus sweepstake in October last.

Mr. Barker, prosecuting for the police, said the suggestion was that an impudent swindle had been worked to defraud people in various parts of the country, and that the prisoner had received the greater part of the money.

Detective-inspector Chapman deposed that the accused was arrested at Bernard-street, Russell-square, and told the charge of promoting a fraudulent sweepstake, professedly in aid of "The Overseas Ex-Service Men's Association." The accused then said that he met a man in Guernsey describing himself as a financier, who engaged him as secretary for the purpose of promoting a sweepstake from an office in London.

Detective-sergeant Tracey stated that a leather bag was found at the prisoner's lodgings containing hundreds of counterfoils of sweepstake tickets on the Liverpool Autumn Cup. There were 200 printed forms purporting to show the result of a draw. The prisoner said a man named Lacey had the lists printed but they were never sent out.

The Prisoner: I did not send them out because I knew at the time it was a fraud.

Sergeant Tracey said that inquiries showed that there was no such organization as "The Overseas Ex-Service Men's Association," the name used for the sweepstake of which the prisoner described himself as organizing secretary.

The prisoner's defence was that he acted innocently as an agent for another man. He was committed for trial, bail in £100, with police notice.

—*Times.*

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4%. Next London Stock Exchange Settlement, Thursday, 8th January, 1925.

	Middle Price. 31st Dec.	Interest Yield. £ s. d.
English Government Securities.		
Consols 2½%	57⅜	4 7 0
War Loan 5% 1929-47	101⅜	4 19 0
War Loan 4½% 1925-45	97⅛	4 12 6
War Loan 4% (Tax free) 1929-42	101¼	3 19 0
War Loan 3½% 1st March 1928	97½	3 13 0
Funding 4% Loan 1960-90	89⅜	4 9 6
Victory 4% Bonds (available at par for Estate Duty)	92¾	4 6 0
Conversion 4½% Loan 1940-44	97¼	4 12 6
Conversion 3½% Loan 1961	78½	4 8 6
Local Loans 3% 1921 or after	66½	4 11 0
Bank Stock	256	4 14 0
India 4½% 1950-55	86⅝	5 4 0
India 3½%	66¼	5 5 0
India 3%	57	5 5 0
Sudan 4% 1974	88	4 11 0
Colonial Securities.		
Canada 3% 1938	83	3 12 6
Cape of Good Hope 3½% 1929-49	80½	4 7 0
Jamaica 4½% 1941-71	97½	4 12 0
New South Wales 4½% 1935-45	96½	4 13 0
New Zealand 4½% 1944	98	4 12 0
New Zealand 4% 1929	96¼	4 3 6
South Africa 4% 1943-63	90½	4 8 6
S. Australia 3½% 1926-36	85½	4 1 6
Tasmania 3½% 1920-40	83½	4 3 6
W. Australia 4½% 1935-65	95	4 15 0
Corporation Stocks.		
Birmingham 3% on or after 1947 at option of Corpn.	65	4 12 0
Bristol 3½% 1925-65	77xd	4 11 0
Cardiff 3½% 1935	88	3 19 6
Glasgow 2½% 1925-40	77	3 5 0
Liverpool 3½% on or after 1942 at option of Corpn.	77	4 11 0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	55½	4 10 6
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65½	4 11 6
Manchester 3% on or after 1941	66	4 11 0
Middlesex C.C. 3½% 1927-47	82½	4 5 0
Newcastle 3½% irredeemable	74¼xd	4 14 0
Nottingham 3% irredeemable	65½	4 12 0
Plymouth 3% 1920-60	69½	4 6 0
English Railway Prior Charges.		
Gt. Western Rly. 4% Debenture	87	4 12 0
Gt. Western Rly. 5% Rent Charge	105	4 15 0
Gt. Western Rly. 5% Preference	103	4 17 0
L. North Eastern Rly. 4% Debenture	83½xd	4 16 0
L. North Eastern Rly. 4% Guaranteed	83½	4 16 0
L. North Eastern Rly. 4% 1st Preference	81⅛	4 18 0
L. Mid. & Scot. Rly. 4% Debenture	84⅛	4 14 6
L. Mid. & Scot. Rly. 4% Guaranteed	83½	4 16 0
L. Mid. & Scot. Rly. 4% Preference	81⅛	4 18 0
Southern Railway 4% Debenture	83¼xd	4 16 0
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Southern Railway 5% Preference	101½	4 18 6

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